



TOWN OF HUACHUCA CITY

The Sunset City

**HUACHUCA CITY TOWN COUNCIL
PUBLIC MEETING NOTICE
THURSDAY, August 12, 2021, AT 6:00 PM
VIA IN-PERSON ATTENDANCE AND REMOTE ACCESS
COUNCIL CHAMBERS
500 N. GONZALES BLVD.
HUACHUCA CITY, AZ 85616**

SPECIAL NOTICE: BY NEW PROCLAMATION OF THE MAYOR, DUE TO SIGNIFICANT PROGRESS IN THE BATTLE AGAINST THE COVID-19 PANDEMIC, THE MAYOR AND COUNCIL WILL RESUME IN-PERSON PUBLIC MEETINGS, BUT WILL CONTINUE TO OFFER A REMOTE ACCESS FORMAT. MEMBERS OF THE PUBLIC MAY COME TO TOWN HALL TO ATTEND THESE MEETINGS OR THEY MAY ATTEND BY GOING TO [OR CALLING TO]: <https://www.facebook.com/HuachucaCityAZ> or 520-844-2096. IN ADDITION, THE MAYOR HAS RESUMED IN-PERSON CALLS TO THE PUBLIC AT THESE MEETINGS. HOWEVER, MEMBERS OF THE PUBLIC MAY STILL CHOOSE TO SUBMIT WRITTEN COMMENTS TO THE TOWN CLERK TWENTY-FOUR HOURS IN ADVANCE OF THESE MEETINGS.

ADVANCE NOTICE OF ALL MEETINGS CAN BE FOUND AT THE TOWN'S USUAL AGENDA POSTING LOCATIONS, INCLUDING THE TOWN'S WEBSITE <https://huachucacityaz.gov/>

AGENDA

A. Call to Order – Mayor

- a. Pledge of Allegiance
- b. Roll Call and Ascertain Quorum
- c. Invocation

Any prayer/invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the prayer/invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker. A list of volunteers is maintained by the Town Clerk's Office and interested persons should contact the Town Clerk's Office for further information.

B. Call to the Public – Mayor

A.R.S. 38-431.01 states the Public Body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the Public Body. At the conclusion of an open call to the public, individual members of the Public Body may respond to criticism

made by those who have addressed the Public Body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the Public Body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

C. Consent Agenda - Mayor

All items listed in the Consent Agenda are considered routine matters and will be enacted by one motion of the Council. There will be no separate discussion of these items unless a Member of the Town Council requests that an item or items be removed for discussion. Council Members may ask questions without removal of the item from the Consent Agenda. Items removed from the Consent Agenda are considered in their normal sequence as listed on the agenda, unless called out of sequence.

C.1 Approval of the Minutes of the Regular Council Meeting and Executive Session held on July 22, 2021.

C.2 Approval of the Payment Approval Report.

D. Unfinished Business before the Council – Mayor

Public comment will be taken at the beginning of each agenda item, after the subject has been announced by the Mayor and explained by staff. Any citizen, who wishes, may speak one time for five minutes on each agenda item before or after Council discussion. Questions from Council Members, however, may be directed to staff or a member of the public through the Mayor at any time.

E. New Business Before Council - Mayor

Public comment will be taken at the beginning of each agenda item, after the subject has been announced by the Mayor and explained by staff. Any citizen, who wishes, may speak one time for five minutes on each agenda item before or after Council discussion. Questions from Council Members, however, may be directed to staff or a member of the public through the Mayor at any time.

E.1 Discussion and or/Action [Town Attorney]: The Council might vote to go into executive [closed] session, pursuant to A.R.S. 38-431.03(A) (3) & (4), for legal advice, consultation and to direct its attorneys concerning the water rights adjudication in Maricopa County Case No. W1-11-0245 ["In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source"]. Following the executive session, the Council might take action to direct its attorneys.

E2 Discussion and/or Action [Mayor Wallace]: RESOLUTION NO. 2021-16 A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF HUACHUCA CITY, APPROVING A PURCHASE/SALE AGREEMENT WITH MOVING SERVICES, INC., TO SELL THE TOWN'S REAL PROPERTY LOCATED AT 300 HOWARD STREET.

E.3 Discussion and/or Action [Mayor Wallace]: Designation of new primary and alternate representatives to the Sierra Vista Metropolitan Planning Organization (SVMPO) Board. The SVMPO is a transportation policy and planning agency serving the City of Sierra Vista, the Town

of Huachuca City and surrounding portions of Cochise County, in partnership with the Arizona Department of Transportation.

E.4 Discussion and/or Action [Mayor Wallace]: Discussion with staff to begin determining the priorities for each of the Town's departments.

E.5 Discussion Only [Mayor Wallace/Town Attorney]: Refresher presentation to Council concerning the Code of Conduct and conflicts of interest.

E.6 Discussion and/or Action [Mayor Wallace]: Council may direct staff concerning fire protection and emergency medical services, which presently are provided by Whetstone Fire District pursuant to an intergovernmental agreement which is due to expire at the end of the calendar year.

E.7 Discussion and/or Action [Mayor Wallace]: RESOLUTION NO. 2021-17 A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF HUACHUCA CITY, ARIZONA, AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT WITH TOMBSTONE UNIFIED SCHOOL DISTRICT # 1 TO RESOLVE AN EASEMENT DISPUTE.

E.8 Discussion and/or Action [Manager Harvey]: Approval of a Master Services Agreement with Terracon Engineering Consultants for as-needed services.

F. Department Director reports

G. Items to be placed on future agendas

H. Reports of Current Events by Council

I. Adjournment

Posted at 5:00 PM on August , 2021, at the following locations:

Town Hall Bulletin Board 500 N. Gonzales Blvd. Huachuca City, AZ 85616	Town Hall Lobby Windows 500 N. Gonzales Blvd. Huachuca City, AZ 85616	Town Website https://huachucacityaz.gov
Huachuca City U.S. Post Office 690 N. Gonzales Blvd. Huachuca City, AZ 85616	Huachuca City Library Windows 506 N. Gonzales Blvd. Huachuca City, AZ 85616	Huachuca City Police Department 500 N. Gonzales Blvd. Huachuca City, AZ 85616

Ms. Brandye Thorpe

Town Clerk

Note: This meeting is open to the public. All interested people are welcome to attend. A copy of agenda background material provided to the Councilmembers, with the exception of confidential material relating to possible executive sessions, is available for public inspection at the Town Clerk's Office, 500 N. Gonzales Blvd., Huachuca City, AZ 85616, Monday through Friday from 8:00 a.m. to 5:00 p.m. or online at www.huachucacityaz.gov

Individuals with disabilities who need a reasonable accommodation to attend or communicate at a town meeting, or who require this information in alternate format, may contact the Town at 456-1354 (TTY 456-1353) to make their needs known. Requests should be made as early as possible so there is sufficient time to respond.

500 N. Gonzales Blvd, Huachuca City, AZ 85616 | Office: 520-456-1354 | Fax: 520-456-2230 | TTY: 520-456-1353

Website: <https://www.huachucacityaz.gov> | Facebook: <https://fb.me/HuachucaCityAZ>

Page: 3 of 3



TOWN OF HUACHUCA CITY

The Sunset City

**MEETING MINUTES OF THE
HUACHUCA CITY TOWN COUNCIL
July 22, 2021 AT 6:00 PM
COUNCIL CHAMBERS
500 N. GONZALES BLVD.
HUACHUCA CITY, AZ 85616**

SPECIAL NOTICE: BY NEW PROCLAMATION OF THE MAYOR, DUE TO SIGNIFICANT PROGRESS IN THE BATTLE AGAINST THE COVID-19 PANDEMIC, THE MAYOR AND COUNCIL WILL RESUME IN-PERSON PUBLIC MEETINGS, BUT WILL CONTINUE TO OFFER A REMOTE ACCESS FORMAT. MEMBERS OF THE PUBLIC MAY COME TO TOWN HALL TO ATTEND THESE MEETINGS OR THEY MAY ATTEND BY GOING TO [OR CALLING TO]: <https://www.facebook.com/HuachucaCityAZ> or 520-844-2096. IN ADDITION, THE MAYOR HAS RESUMED IN-PERSON CALLS TO THE PUBLIC AT THESE MEETINGS. HOWEVER, MEMBERS OF THE PUBLIC MAY STILL CHOOSE TO SUBMIT WRITTEN COMMENTS TO THE TOWN CLERK TWENTY-FOUR HOURS IN ADVANCE OF THESE MEETINGS.

ADVANCE NOTICE OF ALL MEETINGS CAN BE FOUND AT THE TOWN'S USUAL AGENDA POSTING LOCATIONS, INCLUDING THE TOWN'S WEBSITE <https://huachucacityaz.gov/>

AGENDA

A. Call to Order – Mayor 6:00pm

a. Pledge of Allegiance

Led by Mayor Wallace.

b. Roll Call and Ascertain Quorum

Roll Call.

Present: Johann Wallace, Keith Settlemyer, Cynthia Butterworth, Christy Hirshberg, Debbie Trate, Jean Smelt, Jeffrey Ferro, Suzanne Harvey (Not voting), Brandye Thorpe (Not voting), Thomas Benavidez, Attorney (Not voting).

c. Invocation

Led by Elder Thomas.

Any prayer/invocation that may be offered before the start of regular Council business shall be the voluntary offering of a private citizen, for the benefit of the Council and the citizens present. The views or beliefs expressed by the prayer/invocation speaker have not been previously reviewed or approved by the Council, and the Council does not

endorse the religious beliefs or views of this, or any other speaker. A list of volunteers is maintained by the Town Clerk's Office and interested persons should contact the Town Clerk's Office for further information.

B. Call to the Public – Mayor

A.R.S. 38-431.01 states the Public Body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the Public Body. At the conclusion of an open call to the public, individual members of the Public Body may respond to criticism made by those who have addressed the Public Body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the Public Body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

C. Consent Agenda - Mayor

All items listed in the Consent Agenda are considered routine matters and will be enacted by one motion of the Council. There will be no separate discussion of these items unless a Member of the Town Council requests that an item or items be removed for discussion. Council Members may ask questions without removal of the item from the Consent Agenda. Items removed from the Consent Agenda are considered in their normal sequence as listed on the agenda, unless called out of sequence.

C.1 Consider approval of the minutes of the Regular Council meeting held on July 8, 2021.

C.2 Consider approval of the Payment Approval Report.

Motion: Items on the Consent Agenda, **Action:** Open for Discussion and/or Action, **Moved by** Johann Wallace, **Seconded by** Debbie Trate.

Councilmember Ferro will abstain from voting on item C.1 as he was not a member of Council during that meeting.

Motion: Items on the Consent Agenda, **Action:** Approve, **Moved by** Johann Wallace, **Seconded by** Christy Hirshberg.

Vote: Motion passed (summary: Yes = 6, No = 0, Abstain = 1).

Yes: Johann Wallace, Keith Settlemyer, Cynthia Butterworth, Christy Hirshberg, Debbie Trate, Jean Smelt.

Abstain: Jeffrey Ferro.

D. Unfinished Business before the Council – Mayor

Public comment will be taken at the beginning of each agenda item, after the subject has been announced by the Mayor and explained by staff. Any citizen, who wishes, may speak one time for five minutes on each agenda item before or after Council discussion. Questions

from Council Members, however, may be directed to staff or a member of the public through the Mayor at any time.

E. New Business Before Council - Mayor

Public comment will be taken at the beginning of each agenda item, after the subject has been announced by the Mayor and explained by staff. Any citizen, who wishes, may speak one time for five minutes on each agenda item before or after Council discussion. Questions from Council Members, however, may be directed to staff or a member of the public through the Mayor at any time.

E.1 Discussion and/or Action [Spencer Forsberg]: Mr. Forsberg will review the Town's finances for the months of May and June.

Mayor Wallace moves this to later in the meeting due to Mr. Forsberg being late.

Motion: Item E.1, Action: Open for Discussion and/or Action, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Spencer Forsberg reviews the months of May and June. Final numbers for the fiscal year show the General Fund in the black \$90,000.00. Enterprise Funds have also performed well throughout the year.

E.2 Discussion and/or Action [Jim Halterman]: Approval of repairs to the air conditioning units at the Library.

Motion: Item E.2, Action: Open for Discussion and/or Action, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Manager Harvey advises Council that Mr. Halterman is recommending the middle bid from Arizona Comfort Systems because they mentioned in the bid a problem that neither of the other two companies found.

Dr. Johnson advises this problem they found is a burned circuit board contact.

Motion: The estimate for Arizona Comfort Systems for repair of the air conditioning systems, Action: Approve, Moved by Johann Wallace, Seconded by Jean Smelt.

Motion passed unanimously.

that needs replaced or it could cause further and/or bigger issues.

E.3 Discussion and/or Action [Suzanne Harvey]: Resolution 2021-13, adopting a new fee schedule for residential and commercial garbage/trash services. If approved, the schedule will increase fees for garbage/trash services.

Motion: Item E.3, Action: Open for Discussion and/or Action, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Mayor Wallace advises this is a standard annual increase agreed upon in the contract with Waste Management.

Motion: Resolution 2021-13, Action: Approve, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Motion passed unanimously.

E.4 Discussion and/or Action [Suzanne Harvey]: Acceptance of the bid for the purchase of the animal shelter property in the amount of \$40,000.00, and direction to staff to develop a purchase agreement.

Motion: Item E.4, Action: Open for Discussion and/or Action, Moved by Johann Wallace, Seconded by Debbie Trate.

Manager Harvey advises that this is the only bid that was received for the property. The bid amount is \$40,000.00. If you accept the bid tonight and direct staff, we will prepare the purchase agreement with the help of Attorney Benavidez. Their intent for the property is unknown at this time. Councilmember Ferro asks about the offer, there are dates on the offer that are already past. Manager Harvey advises that it is believed they had a typographical error.

Motion: The bid for the purchase of the animal shelter in the amount of \$40,000.00 and direct staff to develop a purchase agreement, Action: Accept, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Motion passed unanimously.

E.5 Executive [closed] session [Town Attorney], pursuant to A.R.S. 38-431.03(A)(3), (4) and (7), for the Council to discuss with its attorney a proposal received for the lease and possible purchase of the Town's property located at 830 Arizona Street. The Council might take action to instruct the attorney and or authorize publishing a request for proposals for purchase of the property.

Motion: Item E.5, Action: Open for Discussion and/or Action, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Motion: 6:15pm Allow Dr. Johnson to stay for the closed session, Action: Enter Closed Session, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Motion passed unanimously.

Motion: 6:39pm , Action: Enter Back into Public Session, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Motion passed unanimously.

Motion: Pursue further negotiations with respect to the LOI we received for the asset located at 830 Arizona St. and to issue an RFP , **Action:** Direct Staff, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Motion passed unanimously.

Mayor Wallace goes back to item E.1 now that Mr. Forsberg is here.

E.6 Discussion and/or Action [Suzanne Harvey]: Approval to join the Sierra Vista Chamber of Commerce and the Hispanic Chamber of Commerce.

Motion: Item E.6, **Action:** Open for Discussion and/or Action, Moved by Johann Wallace, Seconded by Christy Hirshberg.

Manager Harvey advises that there are many benefits to joining both of these Chambers, and the events make us more visible. The cost for the Sierra Vista Chamber is \$350.00 for the first year and \$380.00 thereafter. The cost for the Hispanic Chamber is \$750.00 for a tri-county membership. It is a great opportunity for the Town.

Motion: Joining of the Sierra Vista Chamber of Commerce and the Hispanic Chamber of Commerce, **Action:** Approve, Moved by Johann Wallace, Seconded by Christy Hirshberg.
Motion passed unanimously.

E.7 Discussion Only [Suzanne Harvey]: After Action Review of the Town's 4th of July events; and possible discussion concerning the Council's interest in having staff review the extent of the Town's authority to regulate fireworks.

Motion: Item E.7, **Action:** Open for Discussion and/or Action, Moved by Johann Wallace, Seconded by Debbie Trate.

Manager Harvey provides some photos and does a recap of the events. Favorites of the event were discussed. Councilmember Ferro suggests looking into noiseless fireworks. There is discussion regarding State law and the use of permissible fireworks in Town. We can not be more restrictive than the State allows, however we can provide more education to residents about what is permissible and what is not. We can also provide more information about when these are allowed.

F. Department Director Reports

Department Director reports: Dr. Jim Johnson-MOW Matthew Doty-Staffing needs are being met now. Chief Thies-National Night Out on July 30th

G. Items to be placed on future agendas

H. Reports of Current Events by Council

Councilmember Smelt-CABLE meeting was at SVPD auditorium. Border Patrol gave a presentation.

Councilmember Trate-Chamber mixer upcoming

Councilmember Butterworth-Decline in the food distribution numbers on Friday. Southern Arizona Humane Society is working on purchasing the old juvenile detention center in Bisbee. They will begin transporting animals to Tucson from Douglas. They are looking for sponsors for the van purchase and also drivers.

Mayor Wallace- SVMPO next week. Looks like there is some movement on the old church hill building. Mr. Devere sent some information on the easement. Another thanks to everyone for the 4th of July. Good job to Public Works for their cleanup after the big microburst over the weekend.

I. Adjournment

Motion: 7:27pm, Action: Adjourn, Moved by Johann Wallace, Seconded by Christy Hirshberg. Motion passed unanimously.

Approved by Mayor Johann R. Wallace on August 12, 2021.

Mr. Johann R. Wallace
Mayor

Attest: _____
Ms. Brandye Thorpe,
Town Clerk

Seal:

Certification

I hereby certify that the foregoing is a true and correct copy of the Minutes of the Meeting for the Huachuca City Town Council held on July 22, 2021. I further certify that the meeting was duly called and a quorum was present.

Ms. Brandye Thorpe,
Town Clerk



Town of Huachuca City

The Sunset City

500 N Gonzales Blvd • Huachuca City, Arizona 85616

Phone: (520) 456-1354 • TDD: (520) 456-1353 • Fax: (520) 456-2230

RESOLUTION NO. 2021-16

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF HUACHUCA CITY, ARIZONA, APPROVING AND AUTHORIZING A PURCHASE/SALE AGREEMENT FOR DISPOSAL OF SURPLUS REAL PROPERTY; APPROVING EXECUTION OF THE AGREEMENT AND ALL RELATED DOCUMENTS; AND AUTHORIZING EXPENDITURE OF THE FUNDS REQUIRED TO CLOSE THE TRANSACTION.

WHEREAS, the Town of Huachuca City is a political subdivision and municipal corporation of the State of Arizona, and is duly organized and existing pursuant to A.R.S. 9-231, *et seq.*, and the Constitution of the State; and

WHEREAS, pursuant to A.R.S. 9-241 and 9-402, the Town Council is authorized to acquire and convey real and personal property, including, without limitation, rights and interests in property, leases and easements necessary to the functions or operations of the Town; and

WHEREAS, the Town Council hereby finds and determines that execution of a purchase/sale agreement is necessary and proper for the purpose of selling real property which is surplus to the needs of the Town; and

WHEREAS, a purchase/sale agreement is attached hereto as Exhibit A and incorporated herein by this reference ["Agreement"], and the Town Council hereby finds and determines that execution of the Agreement, in substantially the same form as Exhibit A, will benefit the Town and its residents; and

WHEREAS, the Governing Body hereby finds and determines that the property described in the Agreement is no longer necessary to the functions and operations of the Town.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Huachuca City:

Section 1. The Town Mayor, Johann Wallace, is authorized to execute the Agreement and the deed conveying the property, as described in the Agreement, on behalf of the Town.

Section 2. The Town Manager, Suzanne Harvey, acting on behalf of the Town, is hereby authorized to execute and deliver such other documents relating to the Agreement as she deems necessary and appropriate, including all closing, escrow and title documents necessary and proper to effectuate the sale of the property as contemplated in the Agreement.

Section 3. Payment of all closing costs, escrow and title fees, title insurance premiums, and any other associated fees and expenses, is hereby authorized and approved.

PASSED AND ADOPTED by the Mayor and Council of the TOWN OF HUACHUCA CITY this 12th Day of August, 2021.

Johann Wallace, Mayor

ATTEST:

APPROVED AS TO FORM:

Brandy Thorpe, Town Clerk

Thomas Benavidez, Town Attorney

Exhibit A
[Purchase and Sale Agreement Must Be Attached]

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this “**Agreement**”) is made and entered into effective as of August 12, 2021 (the “**Effective Date**”), by and between **THE TOWN OF HUACHUCA CITY**, an Arizona municipal corporation (“**Seller**”), and, **MOVING SERVICES, INC.**, an Arizona for-profit corporation (“**Buyer**”).

RECITALS

A. Seller owns that certain real property, located at 300 Howard Street in Huachuca City, Cochise County, Arizona, consisting of approximately .26 acres, and more particularly described on **Exhibit A** attached hereto (the “**Real Property**”), together with any appurtenances, buildings, structures, facilities, fixtures, and other improvements located on the Real Property (collectively the “**Property**”).

B. Seller desires to sell, transfer, and convey the Property to Buyer, and Buyer desires to purchase and acquire the Property, from Seller, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree and instruct Escrow Agent (as defined below) as follows:

1. **PURCHASE AND SALE.** Seller agrees to sell, transfer, and convey the Property to Buyer, and Buyer agrees to purchase and acquire the Property from Seller, upon and subject to the terms and conditions set forth in this Agreement.

2. **PURCHASE PRICE.** The purchase price for the Property shall be **FORTY THOUSAND DOLLARS** (\$40,000) (the “**Purchase Price**”).

(a) **Earnest Deposit.** Upon the Opening of Escrow (as defined below), Buyer agrees to deposit into Escrow (as defined below), by certified check, the sum of **ONE THOUSAND DOLLARS** (\$1,000.00) (which amount, together with any and all interest earned thereon, is hereinafter referred to as the “**Earnest Deposit**”).

(b) **Investment of Deposit.** Escrow Agent agrees to invest the Deposit in such FDIC insured money market accounts as Buyer may instruct from time to time, provided that such investments are subject to immediate withdrawal without penalty. At the Closing (as defined below), the Earnest Deposit will be credited against the Purchase Price.

(c) **Cash Due at Closing.** On or before 1:00 P.M., Mountain Standard Time, on the day of the Closing, Buyer agrees to deposit into Escrow, by wire transfer or other

immediately available federal funds, the remainder of the Purchase Price plus Buyer's share of prorations and other Closing costs required herein (collectively, the "**Closing Funds**").

3. OPENING OF ESCROW. On the Effective Date, Buyer and Seller will cause an escrow ("**Escrow**") to be opened (the "**Opening of Escrow**") with Fidelity National Title Insurance Agency, Inc., located at 800 E. Wetmore, suite 110, Tucson, Arizona 85719, Attention: Judy Kaiser ("**Escrow Agent**") by delivering to Escrow Agent a fully-executed copy of this Agreement (or counterparts thereof). Escrow Agent agrees to promptly deliver to Buyer and Seller written notice of the date of the Opening of Escrow. This Agreement constitutes escrow instructions to Escrow Agent as well as the agreement of the parties. Escrow Agent is hereby appointed and designated to act as Escrow Agent and instructed to deliver, pursuant to the terms of this Agreement, the documents and funds to be deposited into Escrow as herein provided.

(a) Escrow Agent's Duties. Escrow Agent, as the party responsible for closing the transaction contemplated herein within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"), agrees to file all necessary information, reports, returns and statements (collectively the "**Reports**") regarding the transaction as may be required by the Code including, but not limited to, any Reports required pursuant to Section 6045 of the Code. Escrow Agent further agrees to indemnify, defend, and hold harmless Buyer, Seller, and their respective attorneys, brokers, and agents for, from, and against any and all actual or alleged claims, costs, liabilities, penalties, and expenses resulting from Escrow Agent's failure to file the Reports that Escrow Agent is hereby required to file.

(b) Escrow Cancellation Charges. If the Escrow fails to close because of Seller's default, Seller will be liable for any and all customary escrow cancellation charges. If the Escrow fails to close because of Buyer's default, Buyer will be liable for any and all such cancellation charges. If the Escrow fails to close for any other reason, any and all such cancellation charges will be split equally between Buyer and Seller.

4. INVESTIGATION.

(a) Property Materials. No later than five (5) business days following the Opening of Escrow, Seller shall deliver to Buyer copies of documents relating to the Property that are in Seller's possession, which involve notices of violation or noncompliance with any local, state or federal laws, rules, regulations or statutes (the "**Property Materials**"); provided, however, the Property Materials specifically exclude any attorney-client privileged materials and any financial projections, appraisals or analysis relating to the Property. Buyer understands and acknowledges that Seller has made all Property Materials available to Buyer merely as an accommodation, and, except as otherwise expressly stated in this Agreement, Seller is not in any way representing or warranting the accuracy, sufficiency, or completeness of any documentation or information provided to Buyer. Seller recommends to Buyer that Buyer conduct its own examination, inspection, and investigation of the Property on or before the Due Diligence Termination Date.

(b) Property Leases, Licenses, Rentals or Other Agreements for Use. No later than five (5) business days following the Opening of Escrow, Seller shall provide to Buyer

copies of any leases, licenses, rentals or other agreements with third parties allowing use of the Property by third parties from the time of Opening of Escrow into the future [collectively “**Use Agreements**”].

(c) Inspection and Feasibility. At all reasonable times commencing on the Opening of Escrow and continuing until the Closing or earlier termination of this Agreement, Buyer, its agents, representatives, and designees will be entitled, at Buyer’s sole cost and expense, to: (i) enter onto the Property to perform any inspections, investigations, studies, and tests of the Property (including, without limitation, physical, engineering, soils, geotechnical, environmental, archaeological, habitat, and economic feasibility studies); (ii) review all Property Materials; and (iii) investigate such other matters pertaining to the Property as Buyer in its sole discretion may desire. Notwithstanding the foregoing, as a condition to entering the Property, Buyer agrees to provide Seller with such evidence of insurance against any potential personal injury or property damage caused by such entry and the inspections to be conducted by Buyer as Seller may reasonably request, and neither Buyer nor its agents, representatives, or designees are permitted to perform any invasive testing on the Property, other than standard borings for a geotechnical study, without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any entry by Buyer’s agents and representatives onto the Property will be subject to, and conducted in accordance with, all applicable laws. Buyer agrees to indemnify, defend and hold harmless Seller for, from, and against any and all actual or alleged claims, losses, demands, damages, liens, judgments, awards, causes of action, suits, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees, expert witness’ fees, court costs, and other litigation-related expenses) (collectively, “**Claims**”), arising from personal injury or property damage caused by Buyer, its agents and representatives, or by Buyer’s failure to pay for the services of third-party providers engaged by Buyer to perform, any inspections conducted by or on behalf of Buyer pursuant to the terms hereof, or any breach of Buyer’s covenants and agreements in this Section 4(c). Buyer agrees to repair any damage to the Property caused by its agents and representatives and agrees to restore the Property to the condition in which it existed prior to such entry. Buyer agrees to keep the Property free from any mechanics’ or materialmen’s liens caused by the exercise of Buyer’s inspection rights under this Section 4(a). The provisions of this Section 4(a) will survive the Closing or the earlier termination of this Agreement.

(d) Buyer’s Termination Right. Buyer will have the right, in its sole and absolute discretion, at any time on or before 3:00 p.m., Mountain Standard Time, on the date that is fourteen (14) calendar days following the Opening of Escrow (the “**Due Diligence Termination Date**”) to terminate this Agreement by delivering a written notice of such termination to Seller and Escrow Agent if Buyer determines in its sole and absolute discretion that the Property is not acceptable to Buyer for any reason. If Buyer delivers a written notice of termination to Seller and Escrow Agent on or before the Due Diligence Termination Date or if Buyer and Seller have not entered into an amendment stipulating to the items hereunder to be agreed upon prior to the Due Diligence Termination Date, then this Agreement and the Escrow will automatically terminate, Escrow Agent agrees to immediately return the Earnest Deposit, less Five Hundred and No/100 Dollars (\$500.00) delivered to Seller (the “**Fair Consideration**”), and neither party will have any further rights or obligations under this Agreement other than those that expressly survive the termination of this Agreement.

5. TITLE AND SURVEY.

(a) Title Report. Within five (5) business days after the Opening of Escrow, Escrow Agent shall deliver to Buyer or cause its affiliated title insurer ("**Title Insurer**") to deliver to Buyer (with a copy to Seller) a title commitment for a standard coverage owner's policy of title insurance for the Property (the "**Title Report**"), together with the best available copies of all documents referenced as exceptions therein.

(b) Survey. Prior to the Due Diligence Termination Date, Buyer, at Buyer's sole cost and expense, may cause a survey of the Property to be completed in accordance with the most current ALTA/ACSM land title survey standards (the "**Survey**"). Buyer agrees to furnish one copy of the Survey to Seller and one copy of the Survey to Escrow Agent. Any and all updates and re-certifications of the Survey will be made at Buyer's sole direction and expense.

(c) Title Review Period. Buyer will have until the Due Diligence Termination Date to review and approve the Title Report and any Survey and to obtain Escrow Agent's or Title Insurer's written commitment to issue any title endorsements required by Buyer (which may be in the form of a proforma title policy). If Buyer in its sole and absolute discretion determines that title to the Property is not acceptable to Buyer for any reason, Buyer may terminate this Agreement by written notice to Seller and Escrow Agent at any time on or before the Due Diligence Termination Date and receive a refund of the Earnest Deposit less the Fair Consideration.

(d) Objection by Buyer After Due Diligence Termination Date. If Escrow Agent issues an amendment to the Title Report after the Due Diligence Termination Date adding a new title exception that is not a Permitted Exception (as defined below) or a *de minimis* or immaterial title exception, Buyer will be entitled to object to any such new title exception not disclosed on the prior Title Report by delivering written notice of such objection (the "**Title Objection Notice**") to Seller and to Escrow Agent on or before the earlier to occur of five (5) business days after Buyer's receipt of the amendment to the Title Report or the Closing. Any Title Objection Notice delivered by Buyer pursuant to this **Section 5(d)** must specify in reasonable detail the new matter(s) to which Buyer objects. If Buyer fails to deliver a Title Objection Notice objecting to any matter set forth in any amendment to the Title Report within the relevant time period prescribed above, Buyer will be deemed to have approved such matters and such matters will be part of the Permitted Exceptions hereunder.

(e) Cure by Seller. If Buyer timely delivers any Title Objection Notice pursuant to **Section 5(d)** above, Seller may, with no obligation to do so, deliver a written notice (a "**Title Response**") to Buyer and Escrow Agent within the earlier to occur of five (5) business days after receipt of such Title Objection Notice or the Closing, which Title Response will state any actions that Seller in good faith intends to take, if any, to cure the matter(s) objected to by Buyer. If Seller fails to timely provide a Title Response, Seller will be deemed to have elected not to cure the matter(s) objected to by Buyer. If the Title Response does not state an intention to fully remove each matter to which Buyer has objected or the Title Response is not timely provided, Buyer must deliver to Seller and Escrow Agent within five (5) days after Buyer receives the Title Response or the expiration of the time period for providing the Title Response

(but in no event later than the Closing), a written notice (a “**Title Reply**”) stating Buyer’s election to either: (i) terminate this Agreement, in which event the entire Earnest Deposit less the Fair Consideration will be refunded to Buyer; or (ii) waive Buyer’s objections (on the condition that Seller accomplishes any objectives which Seller expressly agreed in the Title Response to accomplish). If Buyer fails to make a timely election pursuant to the preceding sentence, Buyer will be deemed to have elected to waive Buyer’s objections according to clause (ii) of the preceding sentence. If Buyer waives (or is deemed to have waived) an objection, Buyer will be deemed to have approved the item with respect to which the objection was made and such exception will be part of the Permitted Exceptions hereunder. If Seller elects to cure a matter objected to by Buyer but, despite its good faith efforts is unable to cure such matter to Buyer’s reasonable satisfaction prior to the Closing, Buyer may then elect to either: (i) terminate this Agreement by providing Seller with written notice of its intent to do so in which event the entire Earnest Deposit less the Fair Consideration will be refunded to Buyer or (ii) to waive such defects and proceed to close by providing Seller with written notice of its intent to do so, accepting title as it then is and without setoff or reduction in the Purchase Price.

(f) Permitted Exceptions. As used in this Agreement, the term “**Permitted Exceptions**” means: (i) the exceptions to title reflected in the last Title Report issued by Escrow Agent prior to the Due Diligence Termination Date and in all amendment(s) to such Title Report that are *de minimis* or immaterial title exceptions or approved, deemed approved, or waived by Buyer pursuant to this **Section 5**. Notwithstanding anything to the contrary in this Agreement, at or before the Closing, and without the need for Buyer to object to same, Seller agrees to remove or cause to be removed (or Title Insurer, having received pay-off letters from the applicable beneficiaries, will be committed to insure over) (i) all financing encumbrances created or assumed by Seller; (ii) judgment liens against Seller; (iii) federal or state income or sales tax liens against Seller; (iv) delinquent property taxes and assessments; (v) delinquent association, facilities or improvement district assessments; and (vi) any and all matters created by or arising from the act or affirmative approval of Seller, first arising or first recorded against the Property after the Effective Date and not contemplated by the express terms of this Agreement, without cost to Buyer.

6. CONDITIONS TO CLOSING.

(a) Buyer’s Closing Conditions. The obligation of Buyer to complete the transaction contemplated by this Agreement is subject to the following conditions precedent (and conditions concurrent, with respect to deliveries to be made by Seller at the Closing) (the “**Buyer’s Closing Conditions**”), which conditions may be waived, or the time for satisfaction thereof extended, by Buyer only in a writing executed by Buyer:

(i) Title. Title Insurer must be prepared and irrevocably committed to issue to Buyer (with an effective date not earlier than the Closing) a standard owner’s policy of title insurance in favor of Buyer for the Property: (a) showing title to the Property vested in Buyer; (b) with liability coverage in an amount equal to the Purchase Price; (c) with those endorsements reasonably requested by Buyer and approved by Title Insurer prior to the Due Diligence Termination Date (provided that such endorsements are paid for by Buyer); and (d) containing no exceptions other than the Permitted Exceptions.

(ii) Seller's Representations. All of the representations of Seller set forth in this Agreement must be true, correct, and complete in all material respects as of the Closing.

(iii) Seller's Due Performance. Seller, on or prior to the Closing, must have complied with and performed all of the obligations, covenants, and agreements required on the part of Seller to be complied with or performed pursuant to the terms of this Agreement.

(iv) Failure of Buyer's Closing Conditions. If any of Buyer's Closing Conditions have not been fulfilled within the applicable time periods, and such non-compliance does not constitute a default by Seller under this Agreement, Buyer may: (a) waive the unfulfilled Buyer's Closing Condition(s) and close Escrow in accordance with this Agreement, without adjustment or abatement of the Purchase Price; or (b) terminate this Agreement by written notice to Seller and Escrow Agent, in which event Escrow Agent will return the Deposit to Buyer less the Fair Consideration, all other documents, instruments, and funds delivered into Escrow will be returned to the party that delivered the same into Escrow, and neither party will have any further rights or obligations under this Agreement other than those that expressly survive the termination of this Agreement.

(b) Seller's Closing Conditions. The obligation of Seller to complete the transaction contemplated by this Agreement is subject to the following conditions precedent (and conditions concurrent, with respect to deliveries to be made by Buyer at the Closing) (the "**Seller's Closing Conditions**"), which conditions may be waived, or the time for satisfaction thereof extended, by Seller only in a writing executed by Seller:

(i) Buyer's Representations and Warranties. All of the representations and warranties of Buyer set forth in this Agreement must be true, correct, and complete in all material respects as of the Closing.

(ii) Buyer's Due Performance. Buyer, on or prior to the Closing, must have complied with and performed all of the obligations, covenants, and agreements required on the part of Buyer to be complied with or performed pursuant to the terms of this Agreement.

(iii) Failure of Seller's Closing Conditions. If any of Seller's Closing Conditions have not been fulfilled within the applicable time periods, then, subject to Section 16(b) and Buyer's right to notice and opportunity to cure, Seller may: (a) waive the unfulfilled Seller's Closing Condition(s) and close Escrow in accordance with this Agreement, without adjustment or abatement of the Purchase Price; or (b) terminate this Agreement by written notice to Buyer and Escrow Agent, in which event Escrow Agent will deliver the Earnest Deposit to Seller as liquidated damages, all other documents, instruments, and funds delivered into Escrow will be returned to the party that delivered the same into Escrow, and neither party will have any further rights or obligations under this Agreement other than those that expressly survive the termination of this Agreement.

7. CLOSING.

(a) Time and Place. The closing of this transaction (the “**Closing**”) will take place at the offices of Escrow Agent fifteen (15) calendar days following the Due Diligence Termination Date, or such earlier date as Buyer and Seller may agree.

(b) Conveyance. At the Closing, Seller agrees to convey title to the Property to Buyer by a duly executed and acknowledged Special Warranty Deed in the form attached hereto as **Exhibit B** (the “**Deed**”).

(c) Deliveries by Seller. On or before the Closing, Seller, at Seller’s sole cost and expense, agrees to deliver or cause to be delivered into Escrow the following documents:

(i) Deed. The original executed and acknowledged Deed, together with an affidavit of value in accordance with applicable law;

(ii) Non-Foreign Affidavit. A non-foreign affidavit in the form required by Escrow Agent;

(iii) Taxpayer Identification. A completed 1099-S request for taxpayer identification number and certification and acknowledgment;

(iv) Proof of Authority. Such proof of Seller’s authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of Seller to act for and bind Seller as may be reasonably required by Escrow Agent;

(v) Other. Such other documents and instruments, signed and properly acknowledged by Seller, if appropriate, as may be reasonably required by Buyer or Escrow Agent or otherwise in order to effectuate the provisions of this Agreement and the Closing of the transaction contemplated herein.

(d) Deliveries by Buyer. On or before the Closing, Buyer, at Buyer’s sole cost and expense, agrees to deliver or cause to be delivered into Escrow the following funds and documents:

(i) Funds. Cash in an amount equal to the sum of the Closing Funds (which will be due no later than 12:00 noon, Mountain Standard Time, on the day of the Closing);

(ii) Affidavit of Value. An executed and acknowledged affidavit of value in accordance with applicable law;

(iii) Tax Declaration. The Tax Declaration (as defined below);

(iv) Proof of Authority. Such proof of Buyer’s authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such

proof of the power and authority of the individual(s) executing or delivering any instruments, documents, or certificates on behalf of Buyer to act for and bind Buyer as may be reasonably required by Escrow Agent or Seller;

(v) Other. Such other documents and instruments, signed and properly acknowledged by Buyer, if appropriate, as may reasonably be required by Seller or Escrow Agent or otherwise in order to effectuate the provisions of this Agreement and the Closing of the transaction contemplated herein.

(e) Closing Costs and Prorations.

(i) Property Taxes. Real property taxes and assessments affecting the Property will be prorated between Buyer and Seller as of the Closing based on a 365-day year. All non-delinquent real property taxes on the Property will be prorated based on the actual current tax bill, but if such tax bill has not yet been received by Seller by the Closing then the proration will be determined by the application of the latest tax rate applicable to the latest assessed valuation of the Property. If any expenses attributable to the Property and allocable to the period prior to the Closing are discovered or billed after the Closing, the parties agree to make any necessary adjustment after the Closing by cash payment to the party entitled thereto so that Seller will have borne all expenses allocable to the period prior to the Closing and Buyer will bear all expenses allocable to the period from and after the Closing. The provisions of this **Section 7(e)(i)** will survive the Closing for a period of twelve (12) months.

(ii) Closing Costs. Seller agrees to pay the premium for a standard coverage owner's policy of title insurance in the amount of the Purchase Price and, Buyer agrees to pay the additional cost associated with extended coverage and any endorsements requested by Buyer. All other costs associated with the Closing will be borne by the parties in accordance with custom in Pima County, Arizona, as determined by Escrow Agent, unless otherwise specified in this Agreement.

8. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller represents and warrants to and agrees with Buyer, as of the Effective Date and as of the Closing, as follows:

(a) Due Organization. Seller is an Arizona municipal corporation duly incorporated under Title 9 of the Arizona Revised Statutes.

(b) Seller's Authority; Validity of Agreements. Seller is the sole owner of fee simple interest to the Property. Seller has full right, power, and authority to sell the Property to Buyer as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms hereof and thereof. This Agreement is, and all other instruments, documents, and agreements to be executed and delivered by Seller in connection with this Agreement will be duly authorized, executed, and delivered by Seller and will be valid, binding, and enforceable obligations of Seller and to Seller's actual knowledge do not, and as of the Closing will not, violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(c) No Liens. Except as may be disclosed in the Title Report, the Property Materials, or this Agreement, to Seller's actual knowledge, there are no mechanics' or materialmen's liens or similar claims or liens now asserted against the Property for work performed on behalf of Seller; and Seller will timely satisfy and discharge any and all obligations relating to work performed on, or materials delivered to, the Property on behalf of Seller in order to prevent the filing of any claim or mechanics' or materialmen's lien with respect thereto, but Seller will not be responsible for any amounts due to contractors, suppliers, or consultants performing work at Buyer's request and Buyer agrees to timely pay all amounts due to such persons.

(d) No Violations. Seller is not aware of any violations, and has not received any notices of violations, concerning any matters regarding the Property or its compliance with any laws, including any local, state or federal rules, regulations or statutes.

9. BUYER'S REPRESENTATIONS AND WARRANTIES. Buyer represents and warrants to Seller, as of the Effective Date and as of the Closing, as follows:

(a) Due Organization. Buyer is an Arizona for-profit corporation duly organized under the laws of the State of Arizona, is in good standing and authorized to acquire property under the laws of the State of Arizona.

(b) Buyer's Authority; Validity of Agreements. Buyer has full right, power, and authority to purchase and acquire the Property from Seller as provided in this Agreement and to carry out its obligations hereunder. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms hereof and thereof. This Agreement is, and all instruments, documents and agreements to be executed and delivered by Buyer in connection with this Agreement will be, duly authorized, executed, and delivered by Buyer and will be valid, binding, and enforceable obligations of Buyer and do not, and as of the Closing will not, violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(c) Interstate Land Sales Full Disclosure Act. To assure that the sale of the Property to Buyer is exempt from the Interstate Land Sales Full Disclosure Act (the "Act"), Buyer represents and warrants to Seller that: (i) Buyer is a duly organized and validly existing Arizona limited liability company; (ii) Buyer is purchasing the Property for its own use and development; (iii) Buyer has been represented in the negotiations regarding this Agreement and the transaction contemplated by this Agreement by a representative of its own choosing; and (iv) Buyer does not intend for this transaction to be subject to the Act.

(d) No Proceedings. There is not now pending and served or, to Buyer's knowledge, threatened, any action, suit, or proceeding, legal, equitable, or otherwise, before any court or any federal, state, municipal, or other governmental or quasi-governmental court, agency, authority, district, or body that might adversely affect Buyer's ability to perform its obligations hereunder.

(e) Survival. All of the representations and warranties of Buyer and Seller set forth in **Sections 8 and 9** will be true upon the Effective Date, will be deemed to be repeated at and as of the Closing, and will survive the Closing for a period of twelve (12) months.

10. ADDITIONAL COVENANTS AND AGREEMENTS.

(a) AS-IS. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT, THE DEED, AND ANY OTHER DOCUMENT DELIVERED BY SELLER AT CLOSING (THE “**EXPRESS REPRESENTATIONS**”), SELLER IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO THE SIZE, DIMENSIONS, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, (I) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY, (II) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY, AND (III) THE MANNER, QUALITY, STATE, OF REPAIR OR LACK OF REPAIR OF THE PROPERTY. EXCEPT FOR THE EXPRESS REPRESENTATIONS, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER OR ANY AGENT OR EMPLOYEE OF SELLER. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF REAL ESTATE AND EXCEPT FOR THE EXPRESS REPRESENTATIONS, BUYER IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF BUYER’S CONSULTANTS IN PURCHASING THE PROPERTY. SUBJECT TO THE TERMS OF THIS AGREEMENT, BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY AS BUYER DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND WILL RELY UPON SAME (AND NOT ON ANY REPRESENTATION, INFORMATION, OR DOCUMENTATION RECEIVED FROM SELLER EXCEPT FOR THE EXPRESS REPRESENTATIONS). BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND SUBJECT TO THE EXPRESS CONDITIONS, COVENANTS AND OBLIGATIONS OF THIS AGREEMENT AND ANY OTHER DOCUMENT DELIVERED BY SELLER AT CLOSING, UPON CLOSING, SELLER WILL SELL AND CONVEY TO BUYER AND BUYER WILL ACCEPT THE PROPERTY “AS IS, WHERE IS,” AND BUYER IS RELYING UPON ITS OWN INVESTIGATION AND ANALYSIS. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS THAT ARE COLLATERAL TO OR AFFECTING THE PROPERTY MADE TO BUYER BY SELLER, ANY AGENT OF SELLER, OR ANY THIRD PARTY.

(b) BUYER UNDERSTANDS AND AGREES THAT BENAVIDEZ LAW GROUP, P.C., AND THOMAS BENAVIDEZ REPRESENT ONLY THE SELLER IN THIS

TRANSACTION. BUYER WARRANTS THAT BUYER HAS CONSULTED WITH ATTORNEYS AND OTHER EXPERTS OF BUYER'S CHOOSING.

11. RISK OF LOSS.

(a) Condemnation. If, after Opening of Escrow, all or any material portion of the Property is taken by condemnation or eminent domain, Seller will immediately notify Buyer of such fact. In such event, Buyer will have the option to terminate this Agreement upon written notice to Seller and Escrow Agent given not later than ten (10) days after receipt of such notice from Seller or the Closing, whichever occurs first. Upon such termination, the Earnest Deposit will be returned to Buyer less the Fair Consideration, and neither party will have any further rights or obligations hereunder other than those that expressly survive the termination of this Agreement. If Buyer does not so elect to terminate this Agreement, Seller will assign (without recourse or warranty) and turn over to Buyer, and Buyer will be entitled to receive and keep, all claims, proceeds, and awards for the taking by condemnation and Buyer will be deemed to have accepted the Property subject to the taking without reduction in the Purchase Price. Seller shall not compromise, settle, or adjust any claims to such proceeds or awards without Buyer's prior written consent, not to be unreasonably withheld or delayed.

(b) Casualty. Prior to the Closing, the entire risk of loss or damage by earthquake, tornado, flood, landslide, fire, or other casualty will be borne and assumed by Seller. If prior to the Closing, any damage occurs to any portion of the Property as a result of any earthquake, tornado, flood, landslide, fire, or other casualty, Seller will immediately notify Buyer of such fact. In such event, Buyer will have the option to terminate this Agreement upon written notice to Seller and Escrow Agent given not later than ten (7) days after receipt of any such notice or the Closing, whichever occurs first. Upon such termination, the Earnest Deposit will be returned to Buyer less the fair consideration, and neither party will have any further rights or obligations hereunder other than those that expressly survive the termination of this Agreement. If Buyer does not so elect to terminate this Agreement, Seller will assign (without recourse or warranty) and turn over, and Buyer will be entitled to receive and keep, all insurance proceeds payable with respect to such damage or destruction (which will then be repaired or not at Buyer's sole option and cost), and the parties will proceed to the Closing pursuant to the terms hereof without modification of the terms of this Agreement. If Buyer does not so elect to terminate this Agreement by reason of any casualty, Buyer will have the right to participate in any adjustment of the insurance claim, and Seller shall not compromise, settle, or adjust any claims to such proceeds or awards without Buyer's prior written consent, not to be unreasonably withheld or delayed.

12. DEFAULT AND REMEDIES.

(a) Default by Seller. If Seller fails to perform any of Seller's obligations under this Agreement and if such failure continues for five (5) days after Seller receives written notice thereof, Buyer may, as Buyer's sole and exclusive remedy for such failure, elect to either: (i) waive the effect of such matter(s) and proceed to consummate this transaction; (ii) terminate this Agreement by delivering written notice to Seller and Escrow Agent, in which event Escrow Agent will deliver the Earnest Deposit to Buyer, and neither party will have any further rights or obligations hereunder other than those that expressly survive the termination of this Agreement.

Buyer waives any right to receive any damages, including speculative, consequential, lost profits, punitive, or exemplary damages due to Seller's default hereunder, except Buyer's right to reimbursement for direct damages and costs and expenses incurred in enforcing any obligations, liabilities, and indemnities that expressly survive the termination of this Agreement.

(b) Default by Buyer. If Buyer fails to perform any of Buyer's obligations under this Agreement or in any other way defaults under this Agreement, including, without limitation, any breach of or inaccuracy in any representation, warranty or covenant of Buyer contained herein, and if such default continues for five (5) days after Buyer receives written notice thereof (other than a failure by Buyer to deposit the Closing Funds with Escrow Agent on or before the day of the Closing, which shall be subject to a notice and cure period of two (2) business days), Seller may, as its sole and exclusive remedy for such failure, elect to either: (i) waive the effect of such matter(s) and proceed to consummate this transaction; or (ii) terminate this Agreement by delivering written notice to Buyer and Escrow Agent, in which event Escrow Agent will deliver the Earnest Deposit to Seller as liquidated damages and as consideration for the acceptance of this Agreement and for keeping the Property off the market, and not as a penalty, and neither party will have any further rights or obligations hereunder other than those that expressly survive the termination of this Agreement. Buyer and Seller have determined and hereby agree that it would be impractical or extremely difficult, if not impossible, to ascertain with any degree of certainty the amount of damages that would be suffered by Seller if Buyer fails to purchase the Property in accordance with the provisions of this Agreement, and the parties agree that a reasonable estimate of such damages under the circumstances is an amount equal to the Earnest Deposit. Accordingly, Buyer and Seller agree that if Buyer breaches any of its obligations under this Agreement or otherwise defaults hereunder, Seller may retain the Earnest Deposit as liquidated damages and not as a penalty. Seller waives all rights to equitable relief including without limitation specific performance, and any right to receive actual, speculative, consequential, lost profits, punitive, exemplary, or any other damages due to Buyer's default hereunder, except Seller's right to reimbursement for its costs and expenses incurred in enforcing this Agreement and Seller's right to enforce any obligations, liabilities, and indemnities that expressly survive the termination of this Agreement.

(c) Post-Closing Defaults. Each party will have all rights and remedies for defaults occurring or first discovered after the Closing if the defaulting party fails to cure within ten (10) days after receipt of written notice; except that each party waives any right to seek recovery of, or recover, any speculative, consequential, lost profits, punitive, exemplary, or any other damages, other than actual damages and reimbursement for its costs and expenses incurred in enforcing this Agreement. The provisions of this **Section 12(c)** will survive the Closing.

13. BROKERS' COMMISSION. No brokers have been engaged by the parties. No commissions will be paid.

14. MISCELLANEOUS PROVISIONS.

(a) Governing Law. This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Arizona, without regard to its principles of conflicts of law. Any legal actions arising out of this Agreement may only be brought in courts located in Cochise County, Arizona.

(b) Entire Agreement; No Third Party Beneficiaries. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between Buyer and Seller pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, negotiations, and discussions, whether oral or written, of the parties, and there are no warranties, representations, or other agreements, express or implied, made to either party by the other party in connection with the subject matter hereof except as specifically set forth herein or in the documents delivered pursuant hereto or in connection herewith. Nothing in this Agreement is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever.

(c) Modification; Waiver. Except as otherwise provided in this Agreement, no supplement, modification, or termination of this Agreement will be binding unless executed in writing by both parties. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provisions, whether or not similar, nor will any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provisions of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

(d) Notices. All notices, requests, and other communications hereunder must be given in writing and either: (i) personally served on the party to whom it is given; (ii) mailed by registered or certified mail, postage prepaid, return receipt requested; (iii) sent by a nationally recognized overnight courier service such as Federal Express; or (iv) sent by electronic mail transmission. All notices will be deemed delivered and received upon the earliest of: (a) actual receipt; (b) the third day after the day of mailing; (c) the next business day after the date of deposit with a nationally recognized overnight courier service; or (d) upon confirmation of error-free electronic mail transmission. Any notices received on a Saturday, Sunday, or on an Arizona State or Federal holiday, or after 5:00 p.m., recipient's local time, on a business day will be deemed received on the next succeeding business day. The designated address of each party will be:

To Seller: Town of Huachuca City
 Attn: Suzanne Harvey
 500 N. Gonzalez Blvd.
 Huachuca City, Arizona 85616
 Telephone: 520-678-0177
 E-mail: sharvey@huachucacityaz.gov

with a copy to: Thomas Benavidez, Esq.
 7400 N. Oracle Road, suite # 143

Tucson, Arizona 85704
Telephone: 520-907-3049
Email: tbenavidez@benavidezlaw.com

To Buyer: MOVING SERVICES, INC.
210 S. Howard Street
Huachuca City, Arizona 85226
Attention: Theresa Pratt
Telephone: 520-456-9818
E-mail:

with a copy to: _____

Email: _____

To Escrow Agent: Fidelity National Title Insurance Agency, Inc.
800 E. Wetmore Road, Suite 110
Tucson, Arizona 85719
Attention: Judy Kaiser
Telephone: 520-751-2927
E-mail: jukaiser@fnf.com

or such other address as that party, from time to time, may specify by notice to the other party given in the manner provided herein. Any party may change its address for notices at any time by giving written notice thereof to the other parties in accordance with the terms of this paragraph. The inability to deliver notice because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, will be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

(e) Severability. If any provision of this Agreement is for any reason held to be invalid or unenforceable in any proceeding in any jurisdiction in which it is sought to be enforced, such invalidity or unenforceability will not affect any other provisions hereof, and this Agreement will be construed for the purposes of such proceeding as if such invalid or unenforceable provision were omitted.

(f) Counterparts. This Agreement may be executed in counterparts, any one of which will be deemed an original and all of which, taken together, will constitute one and the same instrument. Facsimile and electronic signatures will be effective as original signatures with regard to this Agreement. Each party represents to the other that execution and delivery of this Agreement has been properly authorized and that all signatures hereon are genuine.

(g) Headings. The section headings of this Agreement are for convenience of reference only and will not be deemed to modify, explain, restrict, alter, or affect the meaning or interpretation of any provision hereof.

(h) Time of Essence. Time is of the essence with respect to all matters contemplated by this Agreement.

(i) Attorneys' Fees. If either party hereto brings an action or proceeding against the other party to enforce or interpret any of the covenants, conditions, agreements, or other provisions of this Agreement, the prevailing party in such action or proceeding will be entitled to recover all costs and expenses of such action or proceeding from the non-prevailing party, including, without limitation, reasonable attorneys' fees, expert witness' fees, court costs, and other litigation-related expenses.

(j) Business Days. As used herein, the term "business day" means a day that is not a Saturday, Sunday or legal holiday. If the date for the performance of any covenant or obligation under this Agreement falls on a Saturday, Sunday, or legal holiday, the date for performance thereof will be extended to the next business day.

(k) Waiver of Jury Trial. EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY PROCEEDINGS BROUGHT BY THE OTHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE TRANSACTION, THIS AGREEMENT, THE PROPERTY OR THE RELATIONSHIP OF BUYER AND SELLER HEREUNDER. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING (AND NOT BE MERGED THEREIN) OR ANY EARLIER TERMINATION OF THIS AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SELLER:

TOWN OF HUACHUCA CITY
an Arizona municipal corporation

By: _____
Name: Johann Wallace
Title: Mayor

BUYER:

MOVING SERVICES, INC.
an Arizona for-profit corporation

By: _____
Name: Theresa and David Pratt
Title: Directors/Shareholders

LIST OF EXHIBITS:

Exhibit A	Legal Description of the Real Property
Exhibit B	Special Warranty Deed

ESCROW AGENT ACCEPTANCE

Fidelity National Title Agency, Inc., an Arizona corporation, accepts the foregoing Purchase and Sale Agreement and Joint Escrow Instructions, agrees to act as Escrow Agent and perform its duties as Escrow Agent in accordance with the terms and provisions hereunder, and agrees to comply with the provisions of Section 6045 of the Internal Revenue Code with respect to the transactions contemplated hereby and agrees to comply with the provisions of Executive Order 13224 regarding the Specially Designated Nationals and Blocked Persons list. Escrow Agent declares that the Opening of Escrow has occurred this ____ day of _____, 2021.

FIDELITY NATIONAL TITLE AGENCY, INC., an
Arizona corporation

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

LEGAL DESCRIPTION OF THE REAL PROPERTY

Exhibit B

SPECIAL WARRANTY DEED

WHEN RECORDED, RETURN TO:

SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, the undersigned, **TOWN OF HUACHUCA CITY**, an Arizona municipal corporation ("**Grantor**"), hereby grants and conveys to, **MOVING SERVICES, INC.**, an Arizona for profit corporation ("**Grantee**"), that certain real property described on **Exhibit A** attached hereto (the "**Property**"), together with any buildings, structures, facilities, fixtures, and other improvements located thereon.

SUBJECT TO current taxes and assessments; all matters of record or to which reference is made in the public records and those matters that would be shown on an accurate ALTA/ACSM survey of the Property; Grantor hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and none other.

IN WITNESS WHEREOF, the undersigned has executed this Special Warranty Deed as of this _____ day of _____, 2021.

GRANTOR:

TOWN OF HUACHUCA CITY

an Arizona municipal corporation

By: _____

Name: Suzanne Harvey

Title: Town Manager

STATE OF ARIZONA)
) ss.
County of Cochise)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Suzanne Harvey, as Manager of **TOWN OF HUACHUCA CITY**, an Arizona municipal corporation.

Notary Public

My Commission expires: _____

Exhibit A to Special Warranty Deed

Legal Description

CHAPTER 8
CONFLICT OF INTEREST

Table of Contents

Section 8.1	Scope of this Chapter
Section 8.2	The Arizona Conflict of Interest Laws
8.2.1	Purpose of the Conflict of Interest Laws
8.2.2	Scope of Application
8.2.3	Public Officers
8.2.4	Public Employees
8.2.5	Relatives
Section 8.3	Substantial Interest
Section 8.4	Remote Interests
8.4.1	Generally
8.4.2	Nonprofit Corporations
8.4.3	Landlord/Tenant of a Contracting Party
8.4.4	Attorney of a Contracting Party
8.4.5	Nonprofit Cooperative Marketing Associations
8.4.6	Insignificant Stock Ownership
8.4.7	Reimbursement of Expenses
8.4.8	Recipient of Public Services Generally Available
8.4.9	Relatives of School Board Members
8.4.10	Interests of Other Agencies

8.4.11	Class Interests
Section 8.5	Contracts for Supplies or Services
8.5.1	Contracts Made by Spouses of Public Officers or Employees
Section 8.6	Strict Compliance
Section 8.7	Disclosure of the Interest
Section 8.8	Rule of Impossibility
Section 8.9	Other Conflict of Interest Laws
Section 8.10	Incompatibility of Public Offices
Section 8.11	Representation of Others After Leaving Public Service
Section 8.12	Disclosure or Use of Information Declared Confidential by Law
Section 8.13	Disclosure or Use of Information Made Confidential By Agency Action
Section 8.14	Improper Use of Office for Personal Gain
Section 8.15	Receiving Additional Income for Services
Section 8.16	Sanctions for Violations
8.16.1	Criminal Penalties
8.16.2	Forfeiture of Public Office
8.16.3	Contract Cancellation
8.16.4	Private Citizen Suits
Appendix 8.1	Conflict of Interest Disclosure Memorandum

CHAPTER 8

CONFLICT OF INTEREST

Arizona law requires public officers and employees to avoid conflicts of interest that might influence or affect their official conduct. Determining whether a conflict of interest exists requires public officers and employees to evaluate statutorily-established standards and exceptions to determine whether their personal interests, or those of certain family members, result in a conflict of interest. This Chapter provides general guidelines to assist public officers and employees to determine when conflicts of interest exist, and to avoid conflicts before they arise. The Handbook does not address every situation that may qualify as a conflict of interest, and does not address all specialized conflict of interest prohibitions that may apply to public officers and employees of particular state entities. Public officers and employees should consult with assigned agency counsel concerning conflicts of interest not specifically addressed in this Chapter.

8.1 Scope of this Chapter. This Chapter addresses the statutory conflict of interest laws contained in A.R.S. §§ 38-501 to -511, as well as the incompatibility doctrine. These statutes set the minimum standards expected of public officers and employees who, in their official capacities, are faced with a decision or contract that might affect their pecuniary or proprietary interests or those of a relative.

8.2 The Arizona Conflict of Interest Laws. Arizona law requires a public officer or employee who has a conflict of interest to disclose the interest and refrain from participating in the matter:

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

A.R.S. § 38-503.

8.2.1 Purpose of the Conflict of Interest Laws. "The object of conflict of interest statutes is to remove or limit the possibility of personal influence which might bear upon an official's decision." *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972). Arizona's conflict of interest laws serve to prevent self-dealing by public officials. *Maucher v. City of Eloy*, 145 Ariz. 335, 338, 701 P.2d 593, 596 (App. 1985). The financial interests of public officers or employees must not conflict with the unbiased performance of their public duties because "one cannot serve two masters with conflicting interests." *Id.* Public officials should avoid situations where their professional or financial concerns might conflict with the unbiased performance of their duties. *Id.*; see generally *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 549 (1961) ("The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government.").

8.2.2 Scope of Application. The conflict of interest prohibitions "apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards." A.R.S. § 38-501(A). Essentially, A.R.S. §§ 38-502 through -511 supersede any local charter or local ordinance. A.R.S. § 38-501(B). Any other State statutes on specific conflicts of interest are in addition to the conflict of interest provisions set forth in Title 38. A.R.S. § 38-501(C).

8.2.3 Public Officers. The term "public officer" includes "all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute," regardless of whether they are paid for their services. A.R.S. § 38-502(8). Members of advisory commissions, boards, councils, and committees (such as the Health Advisory Council) are public officers as that term is used in the conflict of interest laws. Ariz. Att'y Gen. Op. 175-211; see also Ariz. Att'y Gen. Ops. 182-105, 188-014, 189-067. All elected officials at the state or local level and directors of state agencies are public officers for the purposes of the conflict of interest laws. For example, the Director of the Department of Health Services is appointed by the Governor and is therefore an appointed officer of a public agency established by state statute and is covered by the conflict of interest laws. A.R.S. § 36-102. Although the members of the Legislature are subject to the requirements of A.R.S. §§ 38-501 through -511, they are also governed by a separate code of ethics adopted by the ethics committees in the Senate and the House of Representatives. See A.R.S. § 38-519.

The members of Arizona's many regulatory boards are also public officers covered by the conflict of interest laws, whether they are paid for or volunteer their services. A.R.S. § 38-502(6), (8). Because of their familiarity with the special areas they regulate or advise, board members may have professional or social ties with the persons they license, regulate, or discipline. Board members should therefore be sensitive to potential conflicts of interest and appearances of impropriety. Conflict of interest rules may have a constitutional, as well as statutory, basis because due process requires that members of a regulatory board not have a direct interest in their decisions affecting licensees or other regulated entities. See *Turney v. Ohio*, 273 U.S. 510, 532 (1927).

8.2.4 Public Employees. Anyone employed "by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration," whether on a full-time, part-time, or contract basis, is considered an employee for the purposes of the conflict of interest laws. A.R.S. § 38-502(2). For example, a consultant hired by the Department of Transportation to make recommendations regarding the route of an interstate highway would be covered by the conflict of interest laws. The consultant would be prohibited from making recommendations if he or she owned or had an interest in a parcel of land that might be affected by the Department's decision concerning the route of the interstate highway. See Ariz. Att'y Gen. Op. 189-067.

8.2.5 Relatives. The conflict of interest laws require an examination of proprietary and pecuniary interests of the public officer or employee and certain relatives of the officer or employee. A.R.S. § 38-503(A) and (B). "Relative" is defined expansively to include "the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse." A.R.S. § 38-502(9).

Public officers and employees must recognize that even if they do not have a substantial interest in a decision or a contract, if one of their relatives described in A.R.S. § 38-502(9) does have a substantial interest, the public officer or employee must disclose the interest and refrain from participating in the matter. A.R.S. § 38-503(A) and (B). Even negligence in failing to comply with the conflict of interest law can trigger serious consequences. See, e.g., A.R.S. § 38-510(A)(2) (reckless or negligent violation of the law constitutes a class 1 misdemeanor). A public officer or employee has an obligation to become aware of the interests of relatives in matters in which the officer or employee may become involved.

8.3 Substantial Interest. To determine whether a conflict of interest exists, a public officer or employee must first evaluate whether the official or the official's relative has a "substantial interest" in the matter under consideration. An interest is "substantial" if it is not defined by statute as "remote" and if it is "any pecuniary or proprietary interest, either direct or indirect," of public officers or employees or of their relatives. A.R.S. § 38-502(11). The term "interest" does not mean a mere abstract interest in the general subject or a contingent interest but is "a pecuniary or proprietary interest, by which a person will gain or lose something, as contrasted with a general sympathy, feeling or bias." *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972). "[T]o violate the conflict of interest statute, a public official must have a non-speculative, non-remote pecuniary or proprietary interest in the decision at issue." *Hughes v. Jorgenson*, 203 Ariz. 71, 74-75, 50 P.3d 821, 824-25 (2002) (neither county sheriff nor his sister had a substantial interest in the sister's possible criminal prosecution); compare Ariz. Att'y Gen. Op. 103-005 (school district governing board member whose employer is a public utility that supplies natural gas to areas in the district must refrain from participating in any discussions or decisions concerning the choice of power to district schools when the board member's employer is a potential supplier), with Ariz. Att'y Gen. Op. 101-009 (because school board members have no pecuniary or proprietary interest in retaining an elected

governing board position, they do not have a conflict of interest that would preclude them from voting on a district unification issue that would result in loss of their position).

The Legislature has determined that certain economic interests are so remote that they do not impermissibly influence a person's decisions or actions. These "remote interests" are listed in A.R.S. § 38-502(10). Unless the interest at issue falls within one of the statutorily specified situations declared by the Legislature to be remote, the interest is substantial and creates a conflict of interest. *Yetman*, 16 Ariz. App. at 317, 492 P.2d at 1255.

To determine whether a substantial interest exists, the public officer should ask:

1. Could the decision affect, either positively or negatively, an interest of the officer or employee or the officer's or employee's relative?
2. Is the interest a pecuniary or proprietary interest? Could it affect a financial interest or ownership interest?
3. Is the interest something that is not statutorily designated as a remote interest?

If the answer to each of these questions is yes, then a substantial interest exists that requires disclosure and disqualification by the public officer or employee. The public officer or employee must file a conflict of interest form which fully discloses the substantial interest with the appropriate agency or governmental unit, and must refrain from participating in any manner in discussions or decisions relating to the matter.

8.4 Remote Interests.

8.4.1 Generally. A.R.S. § 38-502(11) excludes from the definition of a substantial interest the ten remote interests enumerated in A.R.S. § 38-502(10). If an interest is classified as "remote," the officer or employee need not disclose it and may participate in the agency's action or decision. See A.R.S. § 38-503. A public officer or employee who has any pecuniary or proprietary interest in a decision or contract not covered by one of the statutorily-designated remote interests would have a substantial interest that requires the officer or employee to disclose the interest and refrain from all participation in the decision or contract. A.R.S. §§ 38-502(11), -503(A) and (B). Because a thorough understanding of the remote interests is essential in determining whether the conflict of interest laws apply in a given situation, the remote interests are discussed separately in Agency Handbook Sections 8.4.2 to 8.4.11.

8.4.2 Nonprofit Corporations. If the public officer or employee or a relative is a non-salaried officer of a nonprofit corporation, he or she has a remote interest in any decision affecting that corporation. A.R.S. § 38-502(10)(a).

8.4.3 Landlord/Tenant of a Contracting Party. If the public officer or employee or a relative is a landlord or tenant of a party contracting with an agency, the officer or employee has a remote interest in a decision regarding the contract. A.R.S. § 38-502(10)(b).

8.4.4 Attorney of a Contracting Party. If the public officer's or employee's relative represents a client contracting with the officer's or employee's agency, he or she has a remote interest in any agency decision affecting the client's contract. A.R.S. § 38-502(10)(c). For example, if the Department of Economic Security is considering awarding a contract to a day care center, and that day care center is represented by an attorney who is related to the Director of the Department of Economic Security, the Director's interest in the awarding of the contract is remote.

8.4.5 Nonprofit Cooperative Marketing Associations. If the public officer or employee or a relative is a member of a nonprofit cooperative marketing association, he or she has a remote interest in any decision affecting that association. A.R.S. § 38-502(10)(d).

8.4.6 Insignificant Stock Ownership. If the public officer or employee or a relative owns less than three percent of the shares of a corporation for profit, and if the income from those shares or any other payments made by the corporation to the public officer or employee or relative does not exceed five percent of the person's total annual income, he or she has a remote interest in any decision affecting that corporation. A.R.S. § 38-502(10)(e).

8.4.7 Reimbursement of Expenses. If the public officer or employee is reimbursed for actual and necessary expenses incurred in the performance of official duties, he or she has a remote interest in any decision affecting that reimbursement. A.R.S. § 38-502(10)(f).

8.4.8 Recipient of Public Services Generally Available. If the public officer or employee or a relative is a recipient of public services provided by the governmental agency of which he or she is employed, and if those services are available on the same terms to the general public, the public officer or employee has a remote interest in any decision affecting those services. A.R.S. § 38-502(10)(g). For example, employees of the Department of Transportation may participate in decisions regarding the building of highways because the use of the highways is a service provided on the same terms and conditions to persons who are not officers or employees of the Department of Transportation. However, if the decision concerns the building of a highway adjacent to property owned by an employee, the employee could be said to have a substantial interest and may not participate in it. See A.R.S. § 38-502(11).

8.4.9 Relatives of School Board Members. If a school board member has a relative, other than a dependent as defined in A.R.S. § 43-1001, or a spouse, who has a substantial interest in a decision made by the school board, then the interest is remote, and the school board member is not barred from participating in the decision. A.R.S. § 38-502(10)(h). For example, if a school board member votes on teachers'

contracts for the district and has a relative, other than a spouse or dependent, who is a teacher in the district, the board member's interest is remote, and he or she may participate in the decision. See Ariz. Att'y Gen. Op. 100-013. However, if the school board member's dependent is a teacher covered by the contract, the board member must then disclose his or her dependent's interest and refrain from participating in the decision, because the interest is no longer remote. A.R.S. § 38-502(11). Section 38-503(D) prohibits the governing board of a school district or community college district from employing a person who is a member of a governing board or who is the spouse of a member of the governing board. See also A.R.S. §§ 15-421(D), -1441(H).

8.4.10 Interests of Other Agencies. A public officer or employee may participate in a decision that indirectly affects a relative who is an officer or employee of another public agency or political subdivision. A.R.S. § 38-502(10)(i),(i)-(ii). For example, the head of the state agency responsible for allocating funds to local governments could participate in such decisions even though his or her spouse was an officer or employee of the local government. If, however, the decision confers a direct economic benefit or detriment to the spouse, such as a decision to terminate funding for a program which would result in the termination of a spouse's employment by the local government, a conflict of interest is present. Ariz. Att'y Gen. Op. 187-051.

8.4.11 Class Interests. If the public officer or employee or a relative is a member of a trade, business, profession, or other class of persons consisting of at least ten members, and his or her interest is no greater than the interest of the other members of the class, the public officer or employee has a remote interest in any decision affecting the class. A.R.S. § 38-502(10)(j). For example, if members of the State Board of Dental Examiners were considering approving a rule prohibiting certain types of advertising, the interest of the dentists on the Board in the decision would be no greater than that of other licensed dentists and, therefore, they would not have to disclose the interest and would be allowed to participate in the decision regarding that rule. See, e.g., Ariz. Att'y Gen. Op. 179-142.

However, if a board member's judgment on a board matter is affected by the special interest of the professional association, a conflict of interest could arise. For example, in *Gibson v. Berryhill*, 411 U.S. 564 (1973), the Alabama Board of Optometry, which was comprised solely of independent practitioners, was disqualified from deciding whether optometrists employed by corporations engaged in unprofessional conduct because they were aiding and abetting the illegal practice of optometry. The Alabama District Court determined that the corporation, Lee Optical, "did a large business in Alabama, and that if it were forced to suspend operations the individual members of the Board, along with other private practitioners of optometry, would fall heir to this business." See *Gibson v. Berryhill*, 411 U.S. 564, 571 (1973). The U.S. Supreme Court affirmed the district court's determination that the pecuniary interests of the members of the Alabama Board of Optometry were sufficient to disqualify them. See *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973).

8.5 Contracts for Supplies or Services. If a public officer or employee wishes to supply goods or services to his or her agency, the contract must be awarded pursuant to

public competitive bidding. A.R.S. § 38-503(C). This requirement of public competitive bidding is in addition to the disclosure and non-participation requirements discussed in Section 8.6. The public competitive bidding requirement does not apply to school district governing boards in the limited situations specified in A.R.S. § 38-503(C) (1). A.R.S. § 38-503(C) requires school districts to follow public competitive bidding procedures for all procurements between school districts and their employees, however, regardless of the dollar amount involved and regardless of the source of the funds. Ariz. Att'y Gen. Op. 106-002.

Although the competitive bidding requirements of A.R.S. § 38-503(C) do not generally apply to corporations, a public officer or an employee who sells supplies or services to the agency may not evade the bidding requirements of A.R.S. § 38-503(C) by forming a corporation that is the alter ego of the officer or the employee to avoid public competitive bidding. Ariz. Att'y Gen. Op. 186-036.

8.5.1 Contracts Made by Spouses of Public Officers or Employees. Although A.R.S. § 38-503(C) prohibits public officers and employees from supplying equipment, materials, supplies, or services to the public agency except pursuant to an award or contract let after public competitive bidding, such restrictions do not apply to the spouse of the officer or employee. However, the public officer or employee must disclose the interest and refrain from any involvement in the matter. Ariz. Att'y Gen. Op. 199-020.

8.6 Strict Compliance. Once a public officer or employee determines that a substantial interest may be affected, the officer or employee must disclose the interest and withdraw from all participation in the decision or contract. A.R.S. § 38-503(A), (B). Even though public officers or employees may believe that they can be objective in making a decision and that the public interest would not be harmed by their participation, they do not have discretion to ignore the statutory mandate.

Arizona's conflict of interest statutes are broadly construed in favor of the public, and the Legislature has provided substantial civil and criminal penalties for failure to comply with the statutory mandates. See Agency Handbook Sections 8.16.1 - 8.16.4.

8.7 Disclosure of the Interest. Every political subdivision and public agency subject to A.R.S. §§ 38-501 to -511 must "maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article [A.R.S. §§ 38-501 to -511]." A.R.S. § 38-509. Any public officer or employee who has a conflict of interest in any agency decision or in the award of a contract *must* provide written disclosure of that interest in the agency's special conflict of interest file. A.R.S. § 38-503(A), (B). The officer or employee may either file a signed written disclosure statement fully disclosing the interest or file a copy of the official minutes of the agency which fully discloses the interest. A.R.S. §§ 38-502(3). See, e.g., Appendix 8.1 (Sample Disclosure Memorandum).

Once the public officer or employee has disclosed the conflict of interest and withdrawn from participation in the matter, the employee or officer must not communicate

about the matter with anyone involved in the decision-making process in order to avoid a violation of A.R.S. § 38-503(A) or (B) and the appearance of impropriety.

8.8 Rule of Impossibility. In the unlikely situation that a public agency cannot act because most of its members have a conflict of interest, members may participate in the agency's decision after making known their conflicts of interest in the agency's official records. A.R.S. § 38-508(B). This is referred to as "the rule of impossibility." It is important to note that before the rule of impossibility will apply to a multi-member board or commission, the majority of the entire membership of the board or commission must be unable to participate because of conflicts of interest. The rule of impossibility may not be invoked if merely a quorum of the public body is present and unable to act because of conflicts. In those cases, the public agency must reconvene to take up the matter when all the members are present.

8.9 Other Conflict of Interest Laws. In addition to the general conflicts statutes found at A.R.S. §§ 38-501 to -511, other state statutes impose specific conflict of interest prohibitions on public officers and employees. Examples of these restrictions include: A.R.S. § 4-114(A) (prohibiting members of the Liquor Board, the Liquor Superintendent, or employees of the Department of Liquor Licenses and Control from having a financial interest in businesses licensed to deal in spirituous liquors); A.R.S. §§ 5-103(C)-(E), -103.01 (prohibiting members, employees, or appointees of the Racing Commission or department from holding certain interests in the racing industry or engaging in certain activities); A.R.S. § 6-113(A) (prohibiting the Banking Superintendent and personnel of the Banking Department from engaging in certain business dealings or being employed by financial institutions under the jurisdiction of the Banking Department); A.R.S. § 16-531(D) (prohibiting election-related board members from being a federal, state, county, or precinct officer or a candidate for office at the election); A.R.S. § 20-149(A) (prohibiting the Director of the Department of Insurance and other Department of Insurance personnel from having a financial interest, except as a policyholder or a claimant under a policy, in an entity regulated by the department); A.R.S. § 35-705 (prohibiting board members of a municipal or county industrial development authority from being an officer or employee of the authorizing county or municipality); A.R.S. § 37-132(C) (prohibiting the Commissioner, any deputy or employee of the Land Department from owning or acquiring any interest in state lands, the products on state lands, improvements on leased state lands, or an interest in any state irrigation project affecting state lands); A.R.S. § 38-481 (prohibiting public officials from appointing relatives to paid public service positions in any department of the government of which the public official is a member, or to appoint, vote for or agree to appoint or work for any person in consideration of the appointment of a relative).

Public officers or employees should refer to the statutes governing their particular agency for specific provisions regarding standards of conduct for that agency and its officers and employees.

8.10 Incompatibility of Public Offices. A.R.S. § 38-601 prohibits public officers and employees from receiving any salary in excess of the salary provided by law for their position. This statute does not prohibit compensation for two separate public positions, provided that the two positions are not incompatible and the compensation for the second

position is not payable for performance of the regular duties of the first position. Ariz. Atty. Gen. Op. 188-032; see also Ariz. Atty. Gen. Ops. 188-025 and 187-049. If the two offices are incompatible, however, then the common-law doctrine of incompatibility of public offices prohibits an officer holding one public office from accepting a second public office and retaining both positions. *Perkins v. Manning*, 59 Ariz. 60, 69, 122 P.2d 857, 861 (1942); *Coleman v. Lee*, 58 Ariz. 506, 513, 121 P.2d 433, 436-37 (1942). Offices are incompatible when the duties conflict or it is physically impossible to perform the duties of both positions, and when that is the case, acceptance of the second office automatically vacates the first position. *Perkins*, 59 Ariz. at 70, 122 P.2d at 862 .

8.11 Representation of Others After Leaving Public Service. State law also places restrictions on representation of others when a public officer or employee departs from state service. In particular, A.R.S. § 38-504(A) provides:

A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which such officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.

For example, a Corporation Commission employee who was materially involved in a utility rate hearing involving a public service corporation may not represent that corporation before the Commission for one year after the employee has resigned from state service.

8.12 Disclosure or Use of Information Declared Confidential by Law. During the course of employment and for two years thereafter, public officers and employees are prohibited from disclosing or using, without appropriate authorization, any information acquired in the course of their official duties designated as confidential or information made confidential by statute or rule. A.R.S. § 38-504(B). An example of such information is confidential tax information provided to an Assistant Attorney General for the limited uses specified in A.R.S. § 42-2003. For a list of other information that is confidential as a matter of law, see Agency Handbook Chapter 6, Appendix 6.1 and 6.2.

8.13 Disclosure or Use of Information Made Confidential By Agency Action. Public officers and employees also are prohibited from disclosing or using for profit information that is designated confidential, other than by statute or rule, and which they obtained from their agency as a result of their employment or service with the agency. A.R.S. § 38-504(B). The prohibition exists during the course of employment and for two years after employment has terminated, unless authorization from the agency has been obtained. *Id.* For example, if during the course of employment, a former employee of the Department of Health Services acquired information the Department had designated as confidential, the employee may not disclose the information or use it for personal profit for two years after termination of employment or service with the Department.

The prohibition includes either disclosing or using confidential information. *Id.* Thus, even though a public officer or employee does not benefit or profit from the disclosure, A.R.S. § 38-504(B) prohibits them from disclosing the confidential information for the statutory period.

8.14 Improper Use of Office for Personal Gain. Public officers and employees are prohibited from using or attempting to use their official position to secure valuable things or benefits for themselves that would not be part of their normal compensation for performing their duties. A.R.S. § 38-504(C). It is a class 4 felony for a public servant to solicit, accept, or agree to accept any benefit upon an understanding that his or her vote, opinion, judgment, or other official action may thereby be influenced. A.R.S. § 13-2602. It is a class 6 felony for a public officer to ask for, or to receive, any unauthorized gratuity or reward or promise of a gratuity or reward for doing an official act. A.R.S. § 38-444. For example, if a member of the Racing Commission offered to support an application for a permit to conduct horse racing in return for a gift of a thoroughbred horse, the commission member would violate the above-referenced criminal laws as well as the conflict of interest laws. A criminal violation of A.R.S. § 38-504(C) requires an action related to the public officer's official duties. *State v. Ross*, 214 Ariz. 280, 285-86, 151 P.3d 1261, 1266-67 (App. 2007) (defendant county assessor's use of publicly available information from his agency to further his own business purposes did not violate conflict of interest prohibition because it did not involve any action related to his duties as a public officer).

8.15 Receiving Additional Income for Services. Public officers and employees are prohibited from agreeing to receive or receiving, either directly or indirectly, compensation other than as provided by law for services they render in any case, proceeding, application, or other matter pending before the public agency for which the officer or employee serves. A.R.S. § 38-505(A).

8.16 Sanctions for Violations.

8.16.1 Criminal Penalties. Knowingly or intentionally violating any provision of the conflict of interest laws is a class 6 felony. A.R.S. § 38-510(A)(1).

Negligent or reckless violation of the law is a class 1 misdemeanor. This means that public officers or employees may be prosecuted if they fail to disclose a conflict of interest of which they should have known. A.R.S. § 38-510(A)(2).

Knowingly falsifying, concealing, or covering up a material fact as part of a scheme to defraud in any matter related to the business conducted by a state agency or any political subdivision of the state is a class 5 felony. A.R.S. § 13-2311(A).

8.16.2 Forfeiture of Public Office. Upon conviction of a violation of A.R.S. § 503-505 a public officer or employee forfeits the public office or employment. A.R.S. § 38-510(B).

8.16.3 Contract Cancellation. Any contract made by the state or any of its departments or agencies may be cancelled within three years after its execution if anyone significantly involved in the contract process on behalf of the state is also an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract while the contract or contract extension is in effect. A.R.S. § 38-511(A). A person who had a significant role on behalf of the state in the contract's negotiation or drafting may, however, serve as a consultant to another party to the contract in unrelated matters without subjecting the contract to cancellation. Ariz. Att'y Gen. Op. I08-010.

In addition, any contract entered into by a public agency in violation of the conflict of interest laws is voidable at the option of the agency. A.R.S. § 38-506(A). In *Maucher v. City of Eloy*, 145 Ariz. 335, 337-38, 701 P.2d 593, 595-96 (App. 1985), the Arizona Court of Appeals held that the City of Eloy was entitled to void a contract with an engineer and the City because the contract was awarded without public competitive bidding and was entered into in violation of Arizona's conflict of interest laws. The court ruled that the engineer could not recover his losses under the cancelled contract. *Id.* ("It is clear in Arizona that '... the letting of contracts for public business should be above suspicion or favoritism.'") (quoting *Brown v. City of Phoenix*, 77 Ariz. 368, 377, 272 P.2d 358, 367 (1954)).

A public agency may also recover any consideration or payments that it has paid to the public officer or employee under the contract, without restoring the benefits received by the agency under the contract. A.R.S. § 38-511(E). This is true even though no actual fraud or dishonesty was involved on the part of the public officer or employee. *Maucher*, 145 Ariz. at 337-38, 701 P.2d at 595-96.

8.16.4 Private Citizen Suits. Any person who is affected by a public agency's decision made in violation of the conflict of interest laws may sue to have the contract or decision declared null and void. A.R.S. § 38-506(B). The court may award costs and attorney's fees to the prevailing party. A.R.S. § 38-506(C). Persons claiming that a public officer, employee, or board member had a pecuniary interest in making a decision against them may also file suit in state or federal court alleging a violation of their civil rights pursuant to 42 U.S.C. § 1983.

APPENDIX 8.1

CONFLICT OF INTEREST DISCLOSURE MEMORANDUM

Section 8.7

TO: (Name and position of Public Agency Supervisor)
FROM: (Name and position of employee or officer)
RE: CONFLICT OF INTEREST DISCLOSURE PURSUANT TO
A.R.S. §§ 38-501 to -511

1. Identify the decision, case investigation, or other matter in which you or your relative many have a "substantial interest" under A.R.S. §§ 38-501 to -511.

(use as much space as necessary)

2. Describe the "substantial interest" referred to above.

(use as much space as necessary)

Statement of Disqualification

To avoid any possible conflict of interest under A.R.S. §§ 38-501 to -511, I will refrain from participating in any manner in the matter identified above.

Date

Signature

cc: (supervisors)



Town of Huachuca City

The Sunset City

500 N Gonzales Blvd • Huachuca City, Arizona 85616

Phone: (520) 456-1354 • TDD: (520) 456-1353 • Fax: (520) 456-2230

RESOLUTION NO. 2021-17

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF HUACHUCA CITY, ARIZONA, AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT WITH TOMBSTONE UNIFIED SCHOOL DISTRICT # 1 TO RESOLVE AN EASEMENT DISPUTE.

WHEREAS, the Town and the School District wish to resolve amicably a dispute between them concerning the location of an easement known as, "School Drive," appurtenant to School District's Huachuca City School; and

WHEREAS, the Town and the School District have negotiated an amicable resolution of their dispute and have memorialized the terms in the agreement attached hereto as Exhibit "A" and incorporated herein by this reference ["Agreement"]; and

WHEREAS, on February 14, 2019, and April 11, 2019, the Town adopted agreements attempting to resolve the dispute, however, those agreements were not effectuated, and the Town now wishes to adopt the attached Agreement to resolve the dispute; and

WHEREAS, the Mayor and Council have determined that approval of the Agreement is in the best interest of Huachuca City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Huachuca City, Arizona, as follows:

- Section 1.** The Town hereby approves the Agreement, attached hereto as Exhibit AA.@
- Section 2.** The Town's officers are hereby authorized and directed to execute said Agreement on behalf of the Town of Huachuca City.
- Section 3.** The Town's officers and staff are hereby authorized to take all steps necessary and proper to implement said Agreement and give it effect.
- Section 4.** The earlier versions of the agreement adopted on February 14, 2019, and April 11, 2019, are void.

**PASSED AND ADOPTED BY THE MAYOR AND TOWN COUNCIL OF THE
TOWN OF HUACHUCA CITY, COCHISE COUNTY, ARIZONA, THIS 12th DAY OF
AUGUST, 2021.**

Johann Wallace, Mayor

ATTEST:

Brandye Thorpe, Town Clerk

Approved as to Form: ✓

Thomas Benavidez, Town Attorney

EXHIBIT A

[Agreement with Tombstone Unified School District must be attached.]

DEDICATION OF RIGHT OF WAY AND TERMINATION OF EASEMENT

This Dedication of Right of Way and Termination of Easement ("Agreement") is entered into this ___ day of July, 2021 by and between TOMBSTONE UNIFIED SCHOOL DISTRICT NO. 1, a political subdivision of the State of Arizona, also known as TOMBSTONE SCHOOL DISTRICT NO. 1, (the "District") and the TOWN OF HUACHUCA CITY, ARIZONA, a municipal corporation of the State of Arizona (the "Town"). The District and the Town may be referred to hereafter collectively as Parties or individually as Party.

RECITALS:

- A. The District and the Town are parties to that certain Easement dated March 14, 1967, Recorded in Docket 696, Page 40 of Cochise County Recorder's Office ("Easement") whereby the District granted the Town a 75-foot wide easement for a roadway and parking upon, over and across District property as further described in the Easement.
- B. A roadway was constructed on District property and the physical location of the actual roadway improvement extended beyond the area designated on the Easement and encroaches on District property as depicted on the Survey attached hereto at Exhibit A ("Survey"), which by this reference is incorporated herein.
- C. Under the terms of the Easement, the Town was to construct and maintain a paved roadway and construct and maintain a parking area.
- D. The parties desire to terminate the Easement and in lieu thereof the District is willing to dedicate a right of way across its property in the location of the existing roadway and further grant certain easements to the Town as further described in this Agreement. In exchange the Town desires to provide certain consideration as further provided in this Agreement.

For good and valuable consideration described herein, the Parties hereby agree to the following:

- 1. Termination of Easement. Upon execution and recordation of this Agreement, the Easement shall be deemed terminated.
- 2. Dedication of Right of Way. The District hereby dedicates to the Town, free and clear of any mortgages, collateralization, or other monetary liens, that certain property shown on the Survey as the School Drive Right-of-Way and legally described thereon for use as a public right of way ("Right of Way").
- 3. Right to Access Existing Waterline. The District, for itself and its successors and assigns, grants the town the right to access and maintain the current water-line that is located either within Right of Way or directly south of the Right of Way but north of the southern boundary of the District's property subject to the Right of Way ("Access Rights"). The Town's Access Rights as provided herein shall be limited to the right to access the existing water-line located in the District's property for the purpose of maintaining or repairing the existing water-line.

4. Maintenance. The Town shall be responsible for maintaining the Right of Way and agrees to indemnify and hold harmless the District from any liability arising out of the Town's or its agents' use of the Right of Way or existing water-line.
5. Water Credits. As consideration for the Right of Way and Access Rights granted under this Agreement, the Town shall pay the District \$27,000.00 in the form of Town water credits ("Water Credits") that shall be offset against monthly water charges that would otherwise be due and payable by the District to the Town. The Town shall provide a monthly water statement showing the application of the Water Credits and the unused portion of the Water Credits each month.
6. Legal Authority and Conferral of Certain Benefits. The District is entering into this Agreement in accordance with A.R.S. 15-342(16) which authorizes a school district to dedicate property to a city for use a public right of way provided the Town adopts an ordinance conferring certain privileges or benefits on the District and the dedication will not affect the normal operation of any school with the District. The Water Credits constitute the benefits to be conferred upon the District.
7. Insurance. The Town warrants that it is self-insured in excess of Arizona statutory requirements.
8. Mutual Indemnification. In the event a third-party claim is filed in connection with this Agreement, the parties agree to mutual indemnification as follows:
 - a. *The District*: The District agrees to indemnify, hold, protect and save harmless the Town and any and all of its officers, agents and employees from and against any and all actions, proceedings, claims and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, arising from or attributable to or caused directly or indirectly by the negligence or willful misconduct by the District, its officers, agents, contractors or employees in connection with the dedication of the Right of Way.
 - b. *The Town*: The Town agrees to indemnify, hold, protect, and save harmless the District and any and all of its officers, agents, employees from and against any and all notices, audits, proceedings, claim and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, arising from or attributable to or caused directly or indirectly by the negligence or willful misconduct by the Town, its officers, agents, contractors, employees or volunteers in connection with use of the Right of Way, existing water-line or Access Rights.

The parties' indemnification obligation in this section shall survive the expiration or termination of this Agreement.

9. Damages. For this transaction, monetary damages for breach of this Agreement would be inadequate and insufficient. The parties are each entitled to the remedy of Specific Performance of their obligations.

10. Notices. Any notices required or permitted by this Agreement shall be effective upon the earlier of personal delivery or by overnight commercial courier and receipt or three business days after deposit in the United States mail, registered or certified mail, postage prepaid, and addressed as set forth below:

The Town:

The District:

Tombstone Unified School District No. 1
Attn: Superintendent
411 North 9th Street
Tombstone, AZ 85638

11. No Partnership or Joint Venture. Nothing contained in this Agreement is intended to or shall be construed as creating the relationship of a partnership or joint venture between the Town and the District or as constituting either party as the agent for the other.
12. Conflicts of Interest. The Parties acknowledge that this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the agreement on the Town's behalf is also an employee, agent, or consultant of any other party to this Agreement.
13. Incorporation of Exhibits. This Agreement, which includes Exhibit A, which exhibit is incorporated herein by this reference, constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by the District and the Town.
14. Continuation of Obligations. The obligations and benefits set forth in this Agreement shall run with the land and shall be binding upon the successors and assigns of the parties hereto.

This Agreement shall be deemed to have been executed by all parties on the date first written above.

The Town of Huachuca City

Tombstone Unified School District No. 1

By: _____

By: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, of THE TOWN OF HUACHUCA CITY, ARIZONA, a municipal corporation of the State of Arizona.

Notary Public

My Commission Expires:

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, of TOMBSTONE UNIFIED SCHOOL DISTRICT NO. 1, a political subdivision of the State of Arizona.

Notary Public

My Commission Expires:

Exhibit A

TOWN OF HUACHUCA CITY

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Contract"), made and entered into by and between the Town of Huachuca City, an Arizona municipal corporation, referred to as "TOWN" in this Contract, and Terracon Consultants, Inc., a Delaware corporation, referred to as "CONTRACTOR" in this Contract.

RECITALS:

WHEREAS, TOWN is an Arizona municipal corporation, organized under and existing pursuant to Title 9, Arizona Revised Statutes; and

WHEREAS, TOWN requires from time to time those services as specified in a task order ("Order") that will be executed by both parties and will describe in detail the services and compensation to be provided by CONTRACTOR; and

WHEREAS, TOWN desires to engage the CONTRACTOR to perform services as specified in the individual Orders executed by the parties under this Contract; and

WHEREAS, the CONTRACTOR represents that it is fully able and professionally qualified to perform such services; and

WHEREAS, TOWN authorized the execution of this Contract on August 12, 2021; and

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter contained, TOWN does hereby engage the CONTRACTOR and the CONTRACTOR does hereby accept engagement in accordance with the conditions and terms that follow:

A. SCOPE OF WORK

The services will be described in detail in the individual Order which will be issued in accordance with the template attached (SEE ATTACHMENT A) and incorporated herein by this reference.

B. SPECIAL TERMS AND CONDITIONS

- 1) **Insurance:** The CONTRACTOR shall obtain insurance as described below and keep such coverage in force throughout the life of the Contract. All policies must contain an endorsement providing that written notice be given to TOWN at least ten (10) calendar days prior to termination or cancellation in coverage in any policy. Except for professional liability and workers' compensation insurance, the liability insurance policy(s) shall include TOWN as an additional insured with respect to liability arising out of the Contract. The CONTRACTOR agrees that its insurance will be primary and that any insurance carried by TOWN will be excess and non-contributing.

<u>Coverage Required</u>	<u>Minimum Limits of Liability</u>
Workers' Compensation	\$ Statutory
Employees Liability	\$ 1,000,000.00
Professional Liability (Errors and Omissions)	\$ 1,000,000.00
General Liability	\$2,000,000.00
Vehicles	\$1,000,000.00

The CONTRACTOR must present to the TOWN Project Manager written evidence (Certificates of Insurance) of compliance with these insurance requirements prior to the start of work and shall satisfy TOWN regarding their adequacy.

- 2) **Summary Progress Reporting Requirements:** The CONTRACTOR shall prepare and submit summary progress reports to the TOWN Project Manager on a monthly basis or as otherwise requested by the TOWN Project Manager.
- 3) **Payment and Performance Bonds:** [are required / X are not required].
- 4) **Warranty:** The CONTRACTOR shall warrant all workmanship and deliverables as follows: CONTRACTOR will perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale ("Standard of Care"). EXCEPT FOR THE STANDARD OF CARE PREVIOUSLY STATED, CONTRACTOR MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONTRACTOR'S SERVICES AND CONTRACTOR DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

GENERAL TERMS AND CONDITIONS

- 1) **Key Terms and Definitions:**

- **TOWN'S Mailing Address:** 500 N. Gonzales Blvd. Huachuca City, Arizona 85616.
- **Contract:** This document executed between TOWN and the CONTRACTOR.
- **CONTRACTOR'S Mailing Address:**
_____.
- **May:** Indicates an action that is permissible, but not mandatory.
- **TOWN Project Manager:** The TOWN officer or employee, who is responsible for overseeing the CONTRACTOR'S performance under this Contract.
- **Shall, Must and Will:** Indicate an action that is mandatory.
- **Should:** Indicates an action that is recommended, but not mandatory.

2) **Termination:** TOWN, upon certification of the TOWN Project Manager, without prejudice to any other right or remedy of TOWN, and after giving the CONTRACTOR ten (10) working days written notice, may terminate this Contract or any Order with the CONTRACTOR. Such termination will apply to all work, or any part thereof, for the following reasons:

- The CONTRACTOR is adjudged bankrupt;
- The CONTRACTOR is persistently or repeatedly refusing or failing to perform in accordance with the requirements of the Contract;
- The CONTRACTOR abandons the work, or unnecessarily or unreasonably delays the work;
- Funds are not appropriated or are otherwise unavailable to TOWN;
- The CONTRACTOR should be found by TOWN to have a conflict of interest as contemplated by Arizona Revised Statutes §38-511, et seq.;
- The CONTRACTOR refuses to correct, at the CONTRACTOR'S sole expense, any portion of the work product reasonably determined by TOWN'S Project Manager to not comply with the Standard of Care; or
- TOWN determines that termination is in the best interest of TOWN.

3) **Records and Audit:** Internal control over all financial transactions related to the Contract shall be in accordance with sound fiscal policies. TOWN may, at reasonable times and places, audit the books and records of the CONTRACTOR, or any and all of the sub-contractors' records, relating to the performance of the Contract for a period of not less than three (3) years after the final payment is made under the Contract. Such audit shall be limited to the subject matter of this Contract and the execution of its Scope of Work.

- 4) **Arbitration:** It is understood and agreed that no provision of the Contract relating to arbitration or requiring arbitration, shall apply to or be binding upon TOWN, except by TOWN'S express written consent given subsequent to execution of the Contract. However, at TOWN'S sole option, or by other means expressly approved by TOWN, disputes may be resolved through arbitration.
- 5) **Independent Contractor:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.
- 6) **Non-Exclusive Contract:** This Contract is awarded with the understanding and agreement that it is for the sole convenience of TOWN. TOWN reserves the right to obtain like goods and services from another source at TOWN'S convenience.
- 7) **Patents and Copyrights:** Upon receipt of final payment, all services, information, computer program elements, reports and other deliverables which may have a potential copyright or patent value, and which are created under the Contract, shall be the property of TOWN and shall not be used by the CONTRACTOR or any other person, except with the prior written permission of TOWN.
- 8) **Commencement of Work:** The CONTRACTOR shall work only after receiving TOWN'S Notice to Proceed from the TOWN Project Manager. The CONTRACTOR shall complete all work to the reasonable satisfaction of TOWN in accordance with the Scope of Work.
- 9) **Records and Information:** The CONTRACTOR understands that TOWN is a public entity subject to Arizona's public records laws as codified in Arizona Revised Statutes Title 39, and as interpreted by Arizona case law.
- 10) **Certification:** By signature on the Contract, the CONTRACTOR certifies that:
 - a. The submission of the offer did not involve collusion or anti-competitive practices.
 - b. The CONTRACTOR has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a TOWN officer or employee or to any public servant in connection with the submitted offer. Signing the Contract with a false statement in connection with this provision shall void the Contract and may result in TOWN exercising other remedies under the law and the Contract.
- 11) **Signing Authority:** The individual signing the Contract for CONTRACTOR hereby certifies and warrants that he is an authorized agent for the CONTRACTOR and has the authority to bind the CONTRACTOR to the Contract.

12) Conflict of Interest: TOWN may cancel this Contract, pursuant to A.R.S. 38-511.

No member of the Town Council, and no other officer, employee or agent of TOWN who exercises any function or responsibility in connection with planning and carrying out work or services under this Contract or any relative thereof shall have any substantial interest, direct or indirect, in this Contract or subcontract, or to the proceeds thereof; and the CONTRACTOR shall take appropriate steps to assure compliance.

13) Applicable Law: The laws of the State of Arizona shall govern the Contract, and all suits regarding this Contract shall be brought only in Federal or State courts in the State of Arizona. Venue and jurisdiction for any suit or other dispute resolution proceeding shall be in Cochise County, Arizona.

14) Contract Terms and Conditions: TOWN reserves the right to clarify any contractual terms or conditions with the concurrence of the CONTRACTOR; however, any substantial non-conformity in the Contract, as determined by TOWN, shall be deemed non-responsive and the Contract terminated. This Contract contains the entire agreement between TOWN and the CONTRACTOR relating to the work and services provided hereunder and shall prevail over any and all previous agreements, oral or written statements, proposals, negotiations, or purchase orders in any form.

15) Contract Amendments: The Contract shall be modified only by a written Contract amendment signed by TOWN, and persons duly authorized to enter into contracts on behalf of the CONTRACTOR. While amendments are discouraged, they may be considered when TOWN adds related work to the original Scope of Work, or when TOWN and the CONTRACTOR agree that changes to the nature of one or more tasks are sufficient to warrant modification of the Scope. TOWN may choose to issue a new RFP for such work, rather than provide a Contract amendment. Amendments may also be required to extend the term of the Contract. Any additional work performed by the CONTRACTOR without an appropriate amendment shall be at the CONTRACTOR'S sole cost.

16) Assignment – Delegation: No right or interest in the Contract shall be assigned by the CONTRACTOR without prior written permission of TOWN, and no delegation of any duty of the CONTRACTOR shall be made without the prior written permission of the TOWN Project Manager. TOWN shall not unreasonably withhold approval, and shall notify the CONTRACTOR of TOWN'S position within thirty (30) days of receipt of written notice by the CONTRACTOR.

17) Rights and Remedies: No provision in this Contract shall be construed, expressly or by implication, as a waiver by TOWN of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of TOWN to insist upon the strict performance of any term or condition of the Contract, or to exercise, or to delay the exercise of, any right or remedy provided in the Contract or by

law, shall not be deemed a waiver of the right of TOWN to insist upon strict performance of the Contract.

18) Indemnification: The CONTRACTOR shall indemnify and hold TOWN harmless from any and all claims, demands, suits, actions, proceedings, loss cost, and damages, including any reasonable attorney's fees and/or litigation expenses, which may be brought or made against the CONTRACTOR, TOWN, any of TOWN'S officers, directors and employees, or any person, regardless of who makes the claim, to the extent they result from the negligent acts of the CONTRACTOR, its employees, agents, representatives, or subcontractors, their employees, agents or representatives in connection with or incidental to the performance of this Contract. The CONTRACTOR'S obligations under this section shall not apply to any damages caused by the negligence of TOWN or its employees. The indemnity provided in this section shall survive termination of this Contract. Neither the contract amount, nor the minimum limits and types of insurance provided for in section B3, above, shall limit the scope and extent of indemnity hereunder.

19) Force Majeure: Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall promptly notify the other party in writing of such delay, and shall specify the cause(s) of the delay in the notice. The notice shall be hand-delivered or mailed certified – return receipt, and shall make a specific reference to this section, thereby invoking its provisions. The delayed party shall cause the delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results.

20) Right to Assurance: Whenever TOWN has reason to question the CONTRACTOR'S intent or ability to perform, TOWN may demand that the CONTRACTOR give a written assurance of its intent or ability to perform. In the event that a demand is made, and no written assurance is given within five (5) working days, TOWN may treat this failure as an anticipated breach of the Contract.

21) Right to Inspect: TOWN may, at reasonable times, and at TOWN'S expense, inspect the place of business of the CONTRACTOR or any subcontractor, which is directly or indirectly involved in the performance of the Contract as awarded, or proposed to be awarded.

- 22) Quality of Materials, Services and Deliverables:** All materials, services and other deliverables are subject to acceptance by TOWN. Materials, services or other deliverables (either interim or final) failing to conform to the specifications of the Contract or which are deemed to be substantially deficient by the TOWN Project Manager, shall be returned to the CONTRACTOR for remedy. If so returned, all costs to remedy the deficiencies shall be the responsibility of the CONTRACTOR. Should the CONTRACTOR dispute the Project Manager's decision regarding the quality of the work product at issue, the CONTRACTOR may appeal the Project Manager's decision, through the TOWN Procurement Director, or his designee. The decision of the Procurement Director shall be final. In the event the Procurement Director should find the work product at issue to be deficient, and the CONTRACTOR refuses to correct the work product at the CONTRACTOR'S sole cost, the Procurement Director may invoke its remedies set forth in this Contract for noncompliance.
- 23) Exclusive Possession:** Upon receipt of final payment, all services, information, computer program elements, reports, and other deliverables created under the Contract, are the sole properties of TOWN, and shall not be used or released by the CONTRACTOR or any other person, except with prior written permission of TOWN. CONTRACTOR is not liable for any unauthorized reuse or modification of its work product. CONTRACTOR may retain one copy of its work product for its internal record-keeping purposes
- 24) Title and Risk of Loss:** The title and risk of loss of material or service shall not pass to TOWN until TOWN actually accepts the material or service at the point of delivery, unless otherwise provided within this Contract.
- 25) Default in One Installment to Constitute Total Breach:** The CONTRACTOR shall deliver conforming work or materials in each installment or lot of the Contract and may not substitute non-conforming work or materials. Delivery of non-conforming work or materials, or default of any nature, shall, at the option of TOWN, constitute a breach of the Contract as a whole.
- 26) Liens:** All materials, services and other deliverables supplied to TOWN under this Contract shall be free from all liens.
- 27) Licenses and Compliance with Laws:** The CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the performance of the work hereunder and operation of the business conducted by the CONTRACTOR as applicable to the Contract, throughout its duration. The CONTRACTOR and any subcontractors shall fully comply with all applicable federal, state and local laws in performing hereunder.
- 28) Americans with Disabilities Act:** The CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101 – 12213), and applicable Federal regulations under this Act.

29) Method and Schedule of Payment: The method and schedule of payment is subject to the requirements and restrictions of TOWN.

TOWN agrees to reimburse the CONTRACTOR up to the sum specified on page 1 which shall constitute full and complete compensation for the CONTRACTOR'S services.

TOWN'S normal policy is to process invoices requesting payment for work done within forty-five (45) days, upon satisfactory delivery of products, services, and/or goods, as well as receipt of properly complete invoices and the necessary TOWN Project Manager approvals. Written progress reports shall accompany each billing and shall specify the percentage of Contract work completed. Each itemized invoice must bear a written certification by the authorized TOWN Project Manager confirming satisfactory progress or completion of services for which payment is requested.

Invoices for payment will be submitted by task and line item as presented in the Scope of Work on a monthly basis. From time to time, additional documentation may be requested by TOWN.

Invoices for payment will be submitted by mail to the TOWN Project Manager, at TOWN'S mailing address on page 3, above.

Costs incurred by the CONTRACTOR as a result of any work performed outside the Scope of Work of this Contract will not be allowed for reimbursement under this Contract unless such changes and related costs were approved pursuant to a contract amendment.

Payment to the CONTRACTOR in advance of the CONTRACTOR incurring costs for authorized work to be performed under the Scope of Work of this Contract is prohibited, unless TOWN makes a written determination prior to the payment that an advance payment is in TOWN'S best interest.

30) Equipment Maintenance: The CONTRACTOR must maintain all equipment, as applicable, in good working order throughout the length of the project, repairing or replacing any unsafe or inoperative equipment without delay.

31) Safety: The safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 651-678) as promulgated by the Federal government, and as implemented by the State of Arizona, apply to all work performed under this Contract. The CONTRACTOR will be solely responsible for implementing and enforcing the safety requirements of this Act at all times.

32) Retention of Records: The CONTRACTOR shall retain all work materials and records relating to the performance of the Scope of Work of the Contract for a period of not less than five (5) years after the final payment is made under the Contract.

33) Assignment of Principals: The CONTRACTOR shall maintain the assignment of its Principals as shown in section B1, above. Prior written permission shall be obtained from the TOWN Project Manager for any change in these assignments. TOWN will notify CONTRACTOR if TOWN changes its Project Manager.

34) Compliance with Immigration Laws: As mandated by Arizona Revised Statutes [“A.R.S.”] § 41-4401, TOWN is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A). TOWN must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A). Therefore, in signing or performing any contract (including this Contract) for TOWN, the CONTRACTOR fully understands that:

A. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A);

B. A breach of the warranty described in subsection A, shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and

C. TOWN or its designee retains the legal right to inspect the papers of any CONTRACTOR or subcontractor employee who works on the Contract to ensure that the CONTRACTOR or subcontractor is complying with the warranty under subsection A.

35) No Discrimination: Neither Party shall discriminate against any employee or client of either Party or any other individual in any way because of that person’s age, race, creed, color, religion, sex, genetic information, disability, familial status, political affiliation or national origin in the course of carrying out the duties pursuant to this Agreement. Both Parties shall comply with applicable provisions of Executive Order 75-5, as amended by Executive Order 2009-09 of the Governor of Arizona, which are incorporated into this Agreement by reference as if set forth in full herein, and of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, as well as the Genetic Information Nondiscrimination Act of 2008.

36) Compliance with Applicable Laws: CONTRACTOR shall comply with all applicable laws, ordinances, rules, and regulations, including without limitation federal, state, and TOWN, relating to or affecting work under this Contract. CONSULTANT shall secure and obtain any and all permits, licenses, and consents in connection with its performance of its services.

37) Grant Agreement Provisions Incorporated: Any terms or provisions required to be included in this Contract, pursuant to the terms of any grant funding agreements to which TOWN is a party, are hereby incorporated by this reference.

38) CONTRACTOR'S Responsibilities Upon Notice of Termination by TOWN: Upon receipt of a notice of termination, CONTRACTOR, unless otherwise directed by TOWN, shall make a good faith effort to cancel or terminate all existing orders or contracts, which CONTRACTOR or its subcontractors shall have made. Upon receipt of such notice, CONTRACTOR, unless otherwise directed by TOWN, shall thereafter do only such work as may be necessary to preserve and protect work already in progress and shall take all reasonable steps to minimize cost and mitigate any potential damages against TOWN. On the effective date of such termination, CONTRACTOR shall discontinue all performance under this CONTRACT.

39) Surviving Provisions: CONTRACTOR'S obligations under (CONTRACTOR'S Responsibilities upon Notice of Termination), (Exclusive Possession), (Patents and Copyrights), (Records and Audit), (Retention of Records), (Indemnification), and this Section (Surviving Provisions), and any other obligations which reasonably should survive, shall survive expiration or other termination of this Contract.

40) No Boycott of Israel: Pursuant to A.R.S. 35-393.01, the Town may not enter into a contract with an entity to acquire services, unless the contract includes a written certification that the entity is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel. By signing below, Contractor makes this certification.

41) Consequential Damages: NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR REVENUE; LOSS OF USE OR OPPORTUNITY; LOSS OF GOOD WILL; COST OF SUBSTITUTE FACILITIES, GOODS, OR SERVICES; COST OF CAPITAL; OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date signed by the TOWN.

TOWN OF HUACHUCA CITY

by _____
its: _____
Date: _____

CONTRACTOR

by: _____
its: _____
Date: _____

APPROVED AS TO FORM:

Thomas A. Benavidez
Town Attorney
Date: _____

ATTACHMENT A
Task Order Template

This Task Order ("Order") is issued under the Master Services Agreement dated August 12, 2021 between the Town of Huachuca City, an Arizona municipal corporation ("TOWN") and Terracon Consultants, Inc., a Delaware corporation ("CONTRACTOR") for Services to be provided by CONTRACTOR for TOWN on the project described below. This Order is incorporated into and part of the Master Services Agreement.

1. Scope of Services:

2. Key Personnel:

Principal in Charge: _____, an officer of the CONTRACTOR, will serve as the Principal in Charge and will have the authority to commit resources necessary to complete the Scope of Work and will be ultimately responsible for satisfactory execution of all work tasks.

CONTRACTOR'S Project Manager: _____, an officer or employee of the CONTRACTOR, will serve as the primary contact with the TOWN Project Manager, _____. The CONTRACTOR'S Project Manager's responsibilities will include coordination and management of day-to-day work, development and production of all deliverables, reviewing and responding to TOWN inquiries and comments, and tracking the status of the Contract budget and schedule.

3. Performance Schedule: The CONTRACTOR may begin performing only upon receipt of the TOWN'S Notice to Proceed. The work shall be completed in a timely manner and all deliverables shall be submitted to the TOWN Project Manager no later than _____.

4. Compensation: TOWN shall pay compensation for the Services performed at the fees stated in the CONTRACTOR's proposal which is attached and incorporated into this Order.

All terms and conditions of the Master Services Agreement shall continue in full force and effect. This Order is accepted and CONTRACTOR is authorized to proceed.

TOWN OF HUACHUCA CITY

CONTRACTOR

by _____
its: _____
Date: _____

by: _____
its: _____
Date: _____

APPROVED AS TO FORM:

Thomas A. Benavidez
Town Attorney

Date

Town Manager's Report – August 9th 2021

H/R Update:

- Hired two new landfill operators – Ean Fox and Ronald Henry. In addition, we still have 2 temporary positions for picking up litter in and around the landfill. One of those is filled and the other is currently vacant.
- We have retained our seasonal lifeguards through September 6th so we can keep the pool open through Labor Day weekend.
- Credit Cards have been issued to Department Heads. A copy of the credit card policy is attached.
- Work continues on vehicle, purchase order, training and overtime policies.
- We have successfully transitioned to an on-line benefits platform, Ease, which will greatly reduce processing times and paperwork.

Budget

- The interim budget was published in the newspaper in accordance with ARS. Will be approved on August 12th.
- Tax Rate for FY21-22 will be 1.3233. This is slightly lower than last year's rate of 1.33. Property values have gone making the reduction necessary in order to keep the tax levy flat--which seemed prudent in light of the economic difficulties caused by the pandemic. We will still collect more money than last year, due to new construction. If Mayor and Council desire to raise the rate next fiscal year, we will need to hold a truth in taxation hearing during the next budget season.
- Received \$289,894.76 in ARPA funds. We will be standing up a work group among staff to identify potential projects that can be funded with these monies. The work group will solicit input from other staff members and the public. Once several potential projects have been identified, the work group will brief Mayor and Council and solicit their guidance.
- Received a bid for \$40,000 for purchase of the animal shelter. Currently coordinating a purchase agreement with the bidder.

Sewer Ponds: SJ Anderson is currently adjusting the work schedule. The contract may need to be amended again to include Davis/Bacon Wage information.

Whetstone Fire: Work on new IGA has essentially come to a standstill. No one from the the Whetstone Fire Department (WFD) or the WFD Board has contacted me with regards to the new contract since the resignation of Rick Evans in June. Initially they had indicated that they

wanted their new Chief to be involved. According to their minutes, they have chosen a new Chief and are currently working out the contract. Highly recommend that Mayor and Council read the minutes of the June 16th Fire Board Meetings. Some of the comments made at that meeting were concerning. Recommend that Mayor and Council consider the possibility of going out for bid or at least putting together a working group to identify the needs of the town and ensure that those needs are met within the parameters of the available funding of \$410K as we negotiate any future IGA. We may need to think outside the box and consider solutions that are a little different than those presented 3+ years ago. Any future IGA should be negotiated with the best interest of our residents in mind--value for money is important as is staying within our budget. Public safety and budget constraints are critical but excellent customer service, community involvement, and visibility/accessibility is also important.

Also, we received an invoice for service from WFD for a higher amount than we have been paying to-date. According to WFD fire, our contract indicates that we should be paying \$450K per year instead of \$410K per year. I am consulting with our Town Attorney to get clarification on the current IGA which has been extended through Dec 2021. As you know we have only allocated \$410K for the fire contract which is the same amount paid in previous years.

Landfill: Our Landfill consultant, Hugh Walker, visited the Landfill in July to help us respond to deficiencies noted in our last ADEQ inspection. We are working with Hugh Walker and ADEQ representatives to shape a consent order that is achievable within 6 months. Our 2nd phone conference with ADEQ is scheduled for next week. When the consent order is drafted, it will be presented to council for approval.

CDBG Project: Awaiting a formal, final proposal from EPS Group. They originally submitted a proposal with timelines that are incompatible with our CDBG grant. They proposal also did not include the price. They resubmitted a new timeline that will fit with the parameters of the grant and will be providing the payment terms shortly.

Banking Issues: As most of you know, we recently experienced some bank fraud. Several fraudulent checks were presented for payment. The checks had non-existent check numbers and appeared altered. The fraud has been reported to the bank and law enforcement. We have added fraud protection to our account. However, the customer service prior to this incident as well as the customer service we are receiving as we implement the new fraud protection procedures leaves much to be desired. Staff is looking at services and prices offered by other banking institutions to compare with those we are currently receiving. Again, our goal is to get the best value for the best price. As stewards of taxpayer money, it is important that we re-evaluate our vendors periodically to ensure that we are getting services that we pay for.

Upcoming: I will be attending the League Conference from Aug 31 through Sep 3.

Landfill Directors Report for July 2021

Financial:

Total tonnage: - 3,169.86
Total collected or billed: - \$ 126,261.38

Largest customers in May 2021:

Waste Management: - tons: 939.68 - \$ 31,550.95 - (\$35.00 / ton.)
Waste Disposal: - tons: 1,002.42 - \$ 35,084.70 - (\$35.00 / ton.)
JP Finley: - tons: 253.42 - \$ 8,869.70 - (\$35.00 / ton.)
San Pedro Valley Sanitation: - tons: 268.81 - \$ 9,416.25 - (\$35.00 / ton.)

CASH Commercial: - tons: 181.19 - \$ 10,161.20 - (\$56.00 / ton.)
CASH Residential: - tons: 79.87 - \$ 5,091.20 - (\$56.00 / ton.)

Top 6 customers generated: 2,725.39 Tons and \$ 100,174 or 85.98% of tonnage and 79.34% cash for the month of July 2021. (First 4 customers are paying bulk rate of \$35.00/ton)

Border wall tonnage for June 2021: 30.35 X \$51.00 / ton = \$1,547.85

Year to date: FY-22 (July 1st through July 31st, 2021)

Total Tonnage: - 3,169.86
Total collected or billed to date: - \$126,261.38 or 8.43% of projected revenue.

Equipment:

- **D8R Dozer** - Status: **Active.** - Will need change 4X batteries and alternator. No major issues to report.
- **D6T Dozer** - Status: **Active.** - Flushed fuel system and replaced injectors. No major issues to report.
- **816K Compactor** - Status: **Active.** - Machine is running fine. No major issues to report.
- **613 Scraper** - Status: **Active.** - Replaced injectors, machine is running fine. No major issues to report.
- **966D Loader** - Status: **Active.** - Will need many repairs over time, currently usable for light duties.
- **RO1 Roll-off truck:** - Status: **Active.** - Will need PM and several other repairs over time, currently usable.
- **112F Motor Grader:** - Status: **Active.** - Fixed exhaust pipe/muffler, currently usable for light duties.

Operations:

- Had first conference call with ADEQ concerning Compliance Order draft July 21st @15:00, Updates to follow.
- MSW cell is stacking eastward out of sight and will entirely fill in the open space that is currently visible from the south and should be totally concealed 4-6 weeks from now. (Depending on frequency of rain.)
- We have recently reincorporated our C&D material back into our MSW cell.
- We recently hired two new operators who both have the experience, aptitude, and personalities we have been looking for, this brings our crew up to a total of four operators which is enabling us to get caught up much quicker. They are still very new to this operation and are still in training, but we are more than confident they will work out great and have a bright future here.
- Rain has been our biggest setback through the month of July. It washed out portions of our haul road and soaked the landfill to the point where our scraper was physically incapable of hauling dirt (because of sink holes and muddy roads). It took a whole week of drying out to even be able to attempt hauling dirt again. It has since dried out and we have been able to catch up on our cover dirt.
- Overall, July has been challenging, but were getting everything caught up again. Having a full crew helps a lot.

Submitted August 4th, 2021.

By Matthew Doty

Huachuca City Landfill Director.

Director of Library and Community Services July 2021 Report – SJF

Senior Center

- AC is back up and running!
- Black mold has been remediated. It has stained the metal though. It looks like loose seals were to blame and they will need to be replaced. Working with Mr. Halterman on that issue.
- We had 53 individual patrons.
- We had 4 groups use the center/library while the AC was out.
- I will be meeting with a group of users to discuss getting activities and speakers back on a regular basis.

Community Center

- I hope to meet with the IT Department soon so we can start to talk about initiating some sort of library services at the center for the citizens of lower HC. I would like to have free WIFI like we have at the library and also offering library services for one day a week.
- The plaque on the little free library has been put in place by the Sierra Vista/San Pedro Kiwanis club and now we are organizing dates for a ribbon cutting ceremony with them and Mr. Shed and the Herald newspaper. We will then start stocking it with books and publicizing the opportunity.

Library

❖ Patron and Circulation Statistics

Adult Patrons	Youth Patrons	New Library Cards	Reference Questions	Adult Computer Users	Youth Computer Users	Fax & Copy Patrons	Outreach & Programs
432	94	8	539	126	11	32	8 Programs 653 people

Books Adult	Books YA/Juv	Blu-Ray	DVDs Adult	DVDs Juvenile	Audio Books	Music	Inter-Library Loan	Hotspots
217	143	9	159	55	6	3	3	31

❖ Facebook Statistics

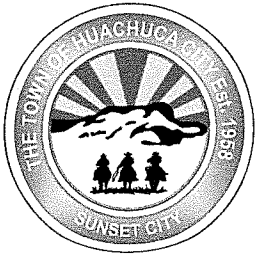
People Reached	Page Engagement	Likes	Post Shares
17,194	1825	292	71

Summer Splash/Summer Reading

- ❖ Total attendance was 256 at Summer Splash for 15 days.
- ❖ The Reptile Show was a big hit, 39 people attended.
- ❖ Cochise County Sheriff's Deputies and K9 unit made a visit as well as our own Animal Control Officer Jerry Hursh. They talked to the kids about law enforcement and their jobs and gave demonstrations.
- ❖ STEM Programs were enjoyed by the kids. They made Mars Rovers and puppets.
- ❖ The University of Arizona Cooperative Extension Program talked about Healthy Eating and Snacks and showed them fun exercise games.
- ❖ We had 8 contestants for our adult summer reading program. We drew the winner last week and the patron won a Kindle Fire.
- ❖ We had only 2 entries for our Children's Art Contest, but they were terrific drawings. They each won an art kit. See the winning entries on our Facebook page.
- ❖ During our after-action report meeting we have discussed including a behavior expectation section for parents to review and sign next year when they sign up their children next year.
- ❖ I am working on the summer reading statistics, looking at minutes read by all of the participants and the report will be submitted to the Arizona State Library and shared with council as well.

General Library Information

- ❖ The Back to School and National Night Out event was very successful. Over 600 people attended and we gave out 220 backpacks. We had 14 outside vendors. We made good connections with the organizations and we are looking at planning a free 8-week parenting class. Thanks to Chief Thies for all of his hard work and for all the work from the Police Department staff and the library staff. We had help stuffing the backpacks from the Friends and the Masons. It was such a success that going forward we will try to coordinate the event with the Meet Your Teacher night.
- ❖ Thanks to our many sponsors who donated money and time. We had just over \$5,000 donated in total for Summer programs, scholarships and backpack supplies. What amazing support from our community.
- ❖ Our next big event is Saturday August 14, a Eat Local Garden Party from 10am-1pm, which is being cosponsored by the HC Community Garden. It will be held in front of the library and park and tours will be available of the garden. There will be local producers, demonstrations and fun activities for all ages.
- ❖ I attended a Senior Expo at the Whetstone Mustang Cowboy Church. I had the opportunity to talk a lot about the city and the services we offer such as the bus. I also made some good connections with the organizations present and will be looking to host our own Senior Expo sometime at the beginning of 2022.
- ❖ The Friends raised \$1500 with their Christmas in July baskets. That was a record for them and the winners were all very happy with their baskets. They will continue doing this as a yearly project. They have purchased the curtain rods and are in the process of working on making the curtains and have approved purchasing a bookcase for the children's room.



Town of Huachuca City

The Sunset City

500 N Gonzales Blvd • Huachuca City, Arizona 85616

Phone: (520) 456-1354 • TDD: (520) 456-1353 • Fax: (520) 456-2230



Attention Town Manager Harvey

Date: 08/06/2021

Managers' Report - Reporting Period: 07-23-2021 thru 08-05-2021

Note-All subjects are innocent until proven guilty in a court of law.

HCPD arrested a subject for a warrant. Subject was booked into the Cochise County Jail for the warrant.

HCPD arrested a male subject for disorderly conduct and violation of a court order. Subject was booked into the Cochise County Jail on local charges.

HCPD assisted CCSO with a fail to yield of a vehicle traveling at high rates of speed. The vehicle was successfully stopped by HCPD. A total of 5 undocumented immigrants were located inside the vehicle. The driver of the vehicle was criminally cited by HCPD for excessive speed and turned over to CCSO. USBP arrived and took custody of the undocumented immigrants.

HCPD Assisted Maricopa County Sheriff's Office with an attempt to locate.

Driver was cited and released for DUI, charges pending.

HCPD Officers assisted DPS and CCSO with locating and detaining 1 undocumented immigrant in Whetstone.

HCPD Officers assisted DPS with a traffic accident with a fatality. Officers later assisted with next of kin notification, while another Officer drove a Fry Fire Department ambulance to Benson Hospital due to the number of patients being transported.

HCPD Records Clerks were sent to Tombstone for Prisoner Training.

HCPD assisted Fry Fire and WFD with sever injury to construction worker. HCPD set up landing zone at Keeline Park. Subject Life Flight to Tucson.

Subject arrested for DUI

Thank you!

James L. Thies HC-1

Chief James L. Thies
jthies@huachucacityaz.gov

BUILDING OFFICIAL/ZONING ADMINISTRATOR REPORT AUGUST 2021

BUILDING DEPARTMENT

A total of 4 permits were issued for July. They are outlined as follows:

1. Residential patio extension.
2. Residential re-roof.
3. Gas pressure at a commercial property.
4. Commercial digital sign.

ZONING/CODE ENFORCEMENT

1. As we near the end of the monsoon season, it is now time to get the lawn mowers and clippers out to spruce up the yards. Reminders have been sent out with the water bills reminding the property owners to mow their yards and alleyways. I will follow up in a few weeks to see which properties will require a further nudge with an official notice. I would like to encourage everyone to be neighborly to those who may need help with their yards. If you are out mowing the alley behind your house, maybe you can also do a few of the surrounding sections too. Before long, the Town will be spruced up again!
2. As mentioned last month, the large parcel on the north side of Pima Street was mowed in June; however, with the abundance of the recent rains the vegetation has become overgrown again! We will need to abate the property again. I will begin the process soon.
3. I had a meeting with the Owners of 109 Huachuca Blvd. in my office to discuss possible uses for the property. They have been very busy emptying out the building of the merchandise that has been accumulating for many years. As more of the building interior becomes visible and accessible, it has become apparent that the building will require a considerable amount of work in all areas. The Owners are contemplating whether it is worth making the necessary repairs or to demolish the building and start from scratch. I am looking forward to seeing what they come up with.
4. I had a meeting with the new Owners of the Ray's building. They are planning to convert the building into a live theater. We discussed their plans for the interior layout, as well as property signage. There does not appear to be adequate parking for this type of use of the building, so they are contemplating their options. They are working with an Architect for the remodeling. They are hoping to be open by next spring.

FLOODPLAIN MANAGEMENT

On July 21st, I participated in a Community Assistance Contact (CAC) conference call with the Arizona Department of Water Resources and the Cochise County Floodplain Department to discuss the Town's floodplain management program. On July 29th, I received an email from the Department confirming that the Town has an effective program and understands the State and Federal floodplain management requirements. No serious deficiencies were identified; however, they did recommend some updates to the Town Floodplain Ordinance. I will be working with the County and Mr. Benavidez to present a new ordinance to the Council for review in the near future.

Respectfully submitted,

Dr. Jim Johnson, PhD, CBO, CCI
Building Official/Zoning Administrator



Town of Huachuca City

The Sunset City

Office of the Town Clerk

500 N Gonzales Blvd • Huachuca City, Arizona 85616

Phone: (520) 456-1354 • TDD: (520) 456-1353 • Fax: (520) 456-2230

E-Mail: bthorpe2@huachucacityaz.gov

Month of July Report

- 📋 **Water bills with newsletter went out.**
- 📋 **Landfill billing went out.**
- 📋 **Reached out to some of the past due landfill accounts to attempt to collect payment.**
- 📋 **Began training staff to use Timekeeping.**
- 📋 **Interviewed the single architect who submitted a bid to do our CDBG park project. He provided a revised timeline and will be providing an estimate of fees.**
- 📋 **Met with Jessica Urrea of SEAGO about our bus services.**
- 📋 **One of our busses, bus 8, has an issue with the cluster in the dash that we are struggling to find parts to repair. These parts have been discontinued by Ford. If parts can not be located, we may need to consider putting the bus on Public Surplus and using the proceeds for repairs to the seats on bus 10, amongst other bus related needs.**
- 📋 **Met with Mayor Escapule and other representatives from Tombstone about getting the bus service running from Tombstone to Sierra Vista. We have placed ads for a bus driver for this route and until we have a least one applicant, can't move forward.**
- 📋 **Attended a Zoom meeting with our Caselle representative about the many features offered with our Caselle Online service, which we were unaware of. We will be implementing many of these features soon.**

UPCOMING

- 📋 **Continuing work on records archiving.**
- 📋 **We hope to have a contract with the architect for the CDBG park project soon so we can make progress with the project.**
- 📋 **We are continuing with integrating staff into using Timekeeping, we hope to discontinue use of paper timesheets by the end of August.**
- 📋